STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW

Proposed Readoption of Emergency Amendment and Adoption of Vehicle Emissions Regulations	**)** **)** **)**	**Comment Deadline: March 20, 2026** **CARB Submission Date: March 16, 2026**

COMMENTS OF THE TRUCK AND ENGINE MANUFACTURERS ASSOCIATION

March 20, 2026

Timothy A. French
Truck & Engine Manufacturers Association
333 West Wacker Drive, Suite 810
Chicago, IL 60606

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Introduction

The Truck and Engine Manufacturers Association ("EMA") hereby comments on the California Air Resources Board's ("CARB's") proposed emergency regulation, entitled "Readoption of Emergency Amendment and Adoption of Vehicle Emission Regulations," which CARB submitted for approval to the Office of Administrative Law ("OAL") on March 16, 2026 (the "Emergency Regulation"). The Emergency Regulation seeks a 90-day extension of CARB's earlier "emergency" rule that OAL approved on October 2, 2025. Under the proposed "readoption," CARB seeks to extend for another three-month period its attempted reactivation of certain medium- and heavy-duty ("MHD") engine and vehicle emission standards that predated the Omnibus Low-NO_x ("Omnibus") and Advanced Clean Trucks ("ACT") regulations, which were nullified by Federal legislation on June 12, 2025. As was the case with CARB's original "emergency" to resuscitate and amend the MHD emission standards "antecedent" to the federally-voided Omnibus and ACT regulations, this latest attempt also conflicts with federal law and so should not be approved by OAL.

EMA is the trade association that represents the world's leading manufacturers of the MHD engines and vehicles covered by the Emergency Regulation. As explained below, CARB's attempted renewal of the Emergency Regulation is expressly preempted and otherwise unlawful under federal law.

Congressional Review Act Legislation Preempted and Curtailed CARB's Regulatory Authority Over MHD Engines and Vehicles

The Emergency Regulation is CARB's attempt to evade the consequences of the Congressional Review Act (CRA) legislation that the President signed into law on June 12, 2025, and which expressly disapproved and voided the prior federal preemption waivers that EPA had issued for the Omnibus and ACT regulations. Pursuant to the CRA legislation, the Omnibus and ACT regulations have been nullified and, going forward, EPA is prohibited from granting any future preemption waivers for any CARB regulations that are "substantially the same" as the now-voided Omnibus and ACT rules. See H.J. Res. 89, Pub. L. No. 119-17.

Despite the CRA legislation's constraints on CARB's authority, CARB is proposing to extend its earlier "emergency" action to (i) implement a new and amended blend of the MHD emission standards and requirements that CARB says were "antecedent" to the Omnibus and ACT regulations; and (ii) reserve a purported right to enforce retroactively the CRA-voided Omnibus and ACT rules against manufacturers who comply with the antecedent standards, in the event

CARB succeeds in its ongoing litigation effort to overturn the CRA legislation. (*California, et. al. v. United States, et al.*, No. 4:25-cv-04966 (N.D. Cal. Filed June 12, 2025.))

CARB's renewed emergency proposal is fundamentally flawed and unlawful. The CRA legislation expressly curtailed CARB's regulatory authority, such that both the Omnibus and ACT regulations as well as the revised "antecedent" standards are preempted. See Presidential Signing Statement for Joint Resolutions, June 12, 2025; see also 42 U.S.C. §§ 7543(a)-(b).

CARB's Emergency Regulation, in effect, seeks authority for CARB to continue to implement certain so-called antecedent MHD engine and vehicle emission standards "in parallel" with the nullified Omnibus and ACT standards, purportedly until the litigation CARB initiated challenging the CRA legislation is fully resolved. In the interim, CARB has stated that "both sets of standards [the Omnibus/ACT standards and the new mix of amended antecedent standards] will be present in the California Code of Regulations." (Original ISOR, Appendix G, p.11; Public Notice, March 6, 2026, p.2.) But, under the federal Clean Air Act (CAA), CARB cannot implement or enforce a new set of previously-lapsed and amended "antecedent" standards without first obtaining a new preemption waiver or a "within the scope" determination from EPA. And it is clear that CARB does not intend to seek or obtain such a waiver any time soon.

Significantly, U.S. EPA's Assistant Administrator has directly informed CARB that its efforts to revive any so-called "antecedent" MHD emission standards are unlawful unless CARB first receives a new preemption waiver from EPA. More specifically, in correspondence sent to CARB's Executive Officer on September 27, 2025, EPA stated as follows:

> EPA expects that CARB will submit any presumptively final regulation resulting from the emergency rulemaking to the Agency **before adopting or attempting to enforce** any new or amended standard applicable to new motor vehicles or engines. Until and unless EPA waives preemption for any such new or amended standard under CAA section 209(b), **no such standard may have legal force or effect**.
>
> EPA also is deeply troubled by recent statements from CARB, including in the proposed rule materials, that there is "uncertainty" regarding the status of CARB's . . . "Omnibus" Low NOx regulations. There is no uncertainty that, as a consequence of bipartisan Congressional Review Act (CRA) resolutions enacted into law on June 10, 2025, **EPA's prior waivers for those provisions have no force and effect and the provisions are therefore preempted by CAA section 209(a).** Nor is there uncertainty that, as a further consequence of the bipartisan CRA resolutions, **EPA is barred from waiving preemption for any standard that is "substantially the same" as those in the . . . Omnibus Low NOx regulations.** 5 U.S.C. § 801(b)(2).
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> Thus, **CARB may not continue to enforce or require certification of preexisting regulations** unless the standards therein were submitted to EPA and are the subject of an extant EPA waiver rule under CAA section 209(b). Further, **even if a preexisting regulation previously obtained a waiver, such waiver is no longer extant if the regulation became ineffective at any time**, whether through the passage of time, repeal, or by any other means.

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

The foregoing makes clear that CARB's renewed Emergency Regulation is federally preempted and unlawful. CARB's purported "antecedent" standards cannot be resurrected because they lapsed years ago and would now be applied in different ways to different model years of engines and vehicles, which requires a new preemption waiver that CARB knows it likely cannot obtain. As a result, CARB's resubmitted Emergency Regulation cannot be lawfully adopted or enforced, and should not be approved by OAL. Simply stated, CARB's Emergency Regulation conflicts with the applicable provisions of the CAA because: (i) CARB needs to obtain a new preemption waiver from U.S. EPA ***before*** adopting or attempting to enforce any purportedly revived and amended set of emission standards for new HDOH trucks and engines, and (ii) CARB also needs to provide at least four years of lead time ***before*** attempting to enforce those revised emission standards. The Proposal fails to satisfy both of those federal mandates.

CARB also is claiming enforcement authority it does not have. CARB reserves the right to retroactively enforce Omnibus and ACT, notwithstanding that a key component of the Emergency Regulation is to extend an alternative compliance pathway that includes a new blended version of prior standards, until such time as "a court of law holds invalid the [CRA] resolution purporting to disapprove the [Omnibus] waiver." (Prior Emergency Regulations Notice, p. 6.) There is no lawful basis for CARB to threaten retroactive enforcement of regulations that it acknowledges have been expressly preempted. To the contrary, CARB has no authority to punish manufacturers for not complying with regulations that are no longer in force.

CARB's threat of retroactive enforcement amounts to a coercive threat to compel manufacturers into complying with the now-preempted Omnibus and ACT regulations that CARB knows it has no power to enforce. Moreover, the potential availability of retroactive consequences in the event that the CRA resolutions are held invalid is for a court to decide, not CARB. *See, e.g.*, Order on Motion for Preliminary Injunction at 28, *Daimler Truck N. Am. v. CARB*, No. 2:25-cv-02255-DC (Oct. 31, 2025) (ECF 94). Trying to hold manufacturers hostage is not only unlawful, it is also the type of targeted coercion that CARB's Board and OAL should denounce.

CARB's Proposal is Inconsistent and in Direct Conflict With the Clean Air Act

A. CARB's Proposal is Unenforceable Without a Waiver

CARB is attempting to circumvent the CRA legislation by seeking to extend the timeframe of its new, amended set of previously-lapsed emission standards, which are a combination of parts of earlier MHD regulations for which CARB had received (years ago) now-superseded preemption waivers. But the result of CARB's request to OAL would be the continuing implementation and

enforcement of a new mix of earlier standards that has no operative preemption waiver, all of which violates section 209(a) of the CAA. 42 U.S.C. §7543(a). That CAA provision states that, in the absence of a preemption waiver from EPA, CARB is not authorized to "adopt or attempt to enforce any standard relating to the control of emissions…or require certification … as condition precedent to the initial retail sale." As a consequence, this renewed rulemaking is preempted because it attempts to adopt and enforce revised and amended MHD standards without first having a new EPA preemption waiver in place or obtaining a determination from EPA that the new set of emission standards is "within the scope" of a previously granted waiver.

CARB attempts to rely on prior waivers from EPA as justification for adopting and enforcing a new amended mix of lapsed emission standards. Given the intervening regulatory changes and the proposed inclusion of the "antecedent" standards as entirely new sections and new language in the California Code of Regulations (CCR), reliance on since-superseded waivers is both improper and insufficient. CARB's characterization of the MHD standards at issue as "earlier-adopted standards, which have extant preemption waivers not subject to the recent congressional resolutions" (CARB Original Notice, at 2-3), is inaccurate and does not relieve CARB of the obligation to obtain a new CAA waiver or "within the scope" determination. Indeed, in its own Public Notice for the original "emergency" action (at p.1), CARB conceded that the Proposal will "***amend*** California Code of Regulations, titles 13 and 17, and ***adopt new sections*** into California Code of Regulations, titles 13 and 17." (emphasis added). And in the prior rulemaking, CARB admitted that it was "proposing to ***amend*** its medium- and heavy-duty regulations to clarify that the [previously-lapsed] pre-Omnibus provision remain operative." (ISOR, Appendix G, p. 11, emphasis added.) Therefore, this remains a rulemaking to adopt and enforce new amended set of alternative MHD emission standards set forth in new sections of the CCR, which requires a new preemption waiver that CARB does not have. EPA said just that in its September 27th comment letter to CARB, quoted above.

Describing new regulatory sections of the CCR and new amended regulatory language as "earlier-adopted standards" does not reflect the reality that regulated manufacturers are facing. Until now, the proposed new set of revised "antecedent" standards was not contained in the CCR, and MHD engine and vehicle manufacturers had no way to ascertain that those earlier lapsed MHD emissions standards would apply to 2026 MY products or to future model years. From that perspective, implementation of the so-called antecedent standards was and is a clear "adoption" and attempted "enforcement" of a new set of emissions standards for new model years that requires a new preemption waiver from EPA.

Illustrating this point, the revised standards do not simply reverse the regulatory changes and CCR additions effectuated through CARB's now-nullified Omnibus/ACT rulemakings. See CARB, Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments (OAL Approval Dec. 21, 2022).[1] For example, the original Omnibus regulations changed CCR, title 13, section 1956.8 to remove language that applied the prior tailpipe emissions standards to "2007 and subsequent" model years, as shown in the table below:

[1] Available at https://ww2.arb.ca.gov/rulemaking/2020/hdomnibuslownox.

Exhaust Emission Standards for 2004 ~~and Subsequent~~Through 2023 Model Heavy-Duty Engines, and Optional, Reduced Emission Standards for 2002 ~~and Subsequent~~Through 2023 Model Heavy-Duty Engines Produced Beginning October 1, 2002, Other than Urban Bus Model-Year Engines Produced From October 1, 2002 Through 2006[L]

(grams per brake horsepower-hour [g/bhp-hr])

Model Year	*Oxides of Nitrogen Plus Non-methane Hydrocarbons*	*Optional Oxides of Nitrogen Plus Non-methane Hydrocarbons*	*Oxides of Nitrogen*	*Optional Oxides of Nitrogen*	*Non-methane hydrocarbons*	*Carbon Monoxide*	*Particulates*
2004-2006[H]	2.4[A,C,E,J]	2.5[B,C,E,J]	n/a		n/a	15.5	0.10[C]
October 1, 2002-2006	n/a	1. 8 to 0.3[A,D,F]	n/a		n/a	15.5	0.03 to 0.01[G]
2007 ~~and subsequent~~ 2023[M]	n/a	n/a	0.20[I]		0.14	15.5	0.01[K]
2015 ~~and Subsequent~~ 2021 (Optional)[N,O]	n/a	n/a	n/a	0.10, 0.05, or 0.02	0.14	15.5	0.01
2022-2023 (Optional)[N,O]	n/a	n/a	n/a	0.10, 0.05, 0.02, or 0.01	0.14	15.5	0.01

CARB, Title 13 Final Regulation Order (Date of Hearing: Aug. 27, 2020), at 5.[2]

Here, the Emergency Regulation does not simply "undo" those Omnibus-implemented strike-outs to restore the prior version of CCR, title 13, section 1956.8. Rather, CARB is implementing new and separate regulatory sections with a new mix of MHD emissions standards applicable to current and future model year MHD engines. The new sections and amended regulatory language presented in Appendix A-1-2 to the initially adopted emergency regulation are not a mere replica of a prior rule that was subject to a prior EPA waiver. Instead, the amendments at issue seek to codify a new mix of emissions standards and requirements made up from various regulatory provisions covered by separate, defunct prior waivers granted over a twelve-year period. For example, the new replacement standards include a 2005 diesel tailpipe emissions standard, a 2010 gasoline tailpipe emissions standard, and 2013 on-board diagnostic standards (see Notice at 5 n.7, 9)—all applied immediately to current and future model year MHD vehicles and engines. No such blended MHD engine standards has ever existed before. Consequently, CARB is proposing to enforce a new, amended set of mixed emissions standards, which requires a new EPA waiver or authorization under CAA section 209(b).

Even if this rulemaking were as simple as CARB says (which it is not), "restoring" prior emissions standards to apply them to the current and subsequent model years violates federal law, because that similarly creates new MHD regulations without a waiver. Any argument that this is not a "new" adoption and enforcement of amended standards because the prior standards originally had an indefinite duration (i.e., applicable to "2007 and subsequent" model years) is belied by the fact that, as shown in the table above, the Omnibus regulations ***eliminated*** the language applying the antecedent standards to all subsequent model years. See supra notes 1 and 2. The antecedent standards therefore ceased to be indefinitely applicable in 2021 and expressly ceased to apply and lapsed after the 2023 MY. CARB specifically "sunset" those prior standards. Thus, any attempt to amend and reinstate those expired standards so that they apply to current and future model years

[2] Available at https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2020/hdomnibuslownox/froa-1.pdf.

necessarily ***amends*** the emission standards applicable for this model year and subsequent model years, which again requires a new preemption waiver.

In sum, CARB's attempted implementation of its blend of amended "antecedent" MHD emission standards requires a new preemption waiver or "within the scope" determination from EPA. In the absence of such a waiver, as EPA itself has explained to CARB, the replacement standards that CARB seeks to extend for another 90 days violate federal law and cannot be enacted or enforced.

B. CARB Is Preempted From Adopting the Proposal

Importantly, the express preemption at issue not only precludes any attempt by CARB to ***enforce*** regulations before receiving a preemption waiver from EPA, it also preempts CARB's ***adopting*** regulations in the absence of a preemption waiver. While heretofore CARB's practice of adopting MHD regulations before seeking a preemption waiver did not draw legal challenges – in part because CARB's MHD regulations largely mirrored EPA's – that is no longer the case, such that CARB's past practice of adopting regulations ***prior to*** seeking preemption waivers can no longer stand. Past habitual violations of CAA section 209(a) are not a valid justification for continuing and future violations of the CAA's preemption provisions.

The first element of the CAA's express preemption provision provides that – no state "shall *adopt*" any mobile source standards without a prior preemption waiver. (42 U.S.C. section 7543(a).) Requiring compliance with that element of the CAA's preemption provisions is not just an exercise in statutory formality. Rather, it is necessary to prevent an increasingly abusive and prejudicial practice that has, in effect, nullified the preempted waiver process and deprived truck and engine manufacturers of the leadtime to which they are statutorily entitled under CAA section 202(a)(3)(c).

In the past, CARB's practice has been to present proposed MHD emission control regulations to its Board for adoption before submitting any application to EPA for a preemption waiver. CARB's practice also has been to consider the date of a Board resolution approving a proposed MHD regulation to be the "effective date" of that regulation, and thus the start of the regulatory leadtime clock under the CAA. That practice was and is unlawful and has created increasingly unfair and untenable results for manufacturers.

More specifically, CARB often waits months or years after the Board adopts a MHD regulation before it submits the necessary preemption waiver application to EPA. Then, EPA may take years before acting on a preemption waiver application. The result is that EPA's ultimate issuance of a preemption waiver (or not) can come on the eve of or even after a CARB MHD regulation has gone into effect for a given model year of production. Under that past practice, then, there was really no leadtime at all between an EPA waiver determination and the full enforcement of the CARB MHD regulation at issue.

The practical impact of this process has been that manufacturers are forced to assume that any Board-approved MHD regulation is valid and covered by a preemption waiver that EPA might issue years in the future. If manufacturers assumed otherwise, they ran the real risk of having no time to comply if and when EPA issued a preemption waiver years later. Thus, CARB's historical

practice of not seeking a preemption waiver for its MHD regulations before formally adopting them in effect nullified the whole preemption waiver process. Manufacturers could not afford to wait for the preemption waiver process to play out because, according to CARB, their leadtime would start to run before the waiver process even began, and because that process likely would not be completed until the dates of compliance with the CARB regulations at issue had already arrived.

Under CARB's practice, by the time EPA issued any preemption waiver decision, the MHD regulation would have had to have been implemented and manufacturers have been under an effective obligation to comply. As a consequence, manufacturers were compelled to prepare to comply with CARB's MHD regulations starting from the date of adoption by the CARB Board, because the subsequent waiver process likely would not conclude in time to provide manufacturers with the certainty needed to forestall their compliance efforts. These actions render the waiver process a nullity in violation of CAA section 209(a).

Significantly, however, the United States and EPA have come to realize and acknowledge just how abusive CARB's preemption waiver practice has become, and are advising both CARB (through the letter cited above) and the courts of the need for CARB to seek a preemption waiver *before adopting* any mobile source emission regulations. For example, in a brief filed last year with the United States District Court for the Eastern District of California, the United States explained how and why the CAA requires CARB to obtain a preemption waiver not only before enforcing the MHD regulations at issue, but also before adopting them. That thorough explanation is repeated below.

> Finding it more convenient to beg forgiveness than ask permission, California thinks it can adopt emissions standards without a waiver, so long as the State obtains a waiver before enforcing them. Not so. The Clean Air Act unequivocally provides that no state shall "adopt or attempt to enforce" emissions standards for new motor vehicles. 42 U.S.C. § 7543(a). The use of the disjunctive "or" in section 209(a) means that these prohibitions on adopting and enforcing are independent and discrete from each other unless statutory context demands otherwise. *See Campos-Chaves v. Garland*, 602 U.S. 447, 457 (2024). Nothing in section 209 or elsewhere in the Clean Air Act supports an argument that adopting preempted emissions standards becomes unlawful only if a state attempts to enforce them without a preemption waiver. And where the text is clear, the interpretive inquiry ends. *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 127 (2018).
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> Section 209(b)'s preemption waiver provision supports the plain text of section 209(a). Section 209(b) provides that EPA shall waive section 209(a) preemption for California but only "if the State . . . standards will be, in the aggregate, at least as protective as [EPA's standards]." 42 U.S.C. § 7543(b). Reference to state standards that "*will be* . . . at least as protective" indicates that the standards are not yet adopted. *Id.* (emphasis added). The future tense in section 209(b) is consistent with section 209(a)'s clear prohibition on adopting standards without a waiver.
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> Beyond the plain text prohibiting California from adopting [MHD regulations] before obtaining a waiver, "the structure of the statute as a whole, including its object and policy," show that the [MHD regulation] was unlawful *ab*

initio because it lacks a preemption waiver. *Consejo de Desarrollo Economico de Mexicali, A.C. v. United States*, 482 F.3d 1157, 1168 (9th Cir. 2007). Congress knows how to authorize states to adopt regulations and seek EPA approval later. For the Clean Air Act Title I stationary source program, for example, Congress directed states to "adopt and submit" state implementation plans for EPA review to achieve appliable air quality standards. 42 U.S.C. § 7410(a). The adopt first, seek approval later procedure makes sense for Title I's cooperative federalism model where the states are charged with the responsibility to implement, maintain, and enforce federal air quality standards. *Ohio v. EPA*, 603 U.S. 279, 283 (2024).

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

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

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

The Second Circuit's decision in *Motor Vehicle Manufactures Association of U.S., Inc. v. New York State Department of Environmental Conservation* 17 F.3d 521, 534 (2d Cir. 1994), is equally flawed. That court upheld New York's adoption of California's emissions standards before California obtained a preemption waiver on the theory that "waiver is a precondition to enforcement" rather than adoption and that "California's waiver applications are almost always approved."

Id. Finding that the waiver is a limitation only on enforcement is contrary to the clear text and structure of section 209. And it simply is not true that California "almost always" gets waivers for its new motor vehicle emissions standards. Indeed, EPA denied the very first greenhouse gas-related waiver California requested, and EPA later rescinded such a waiver granted by an intervening administration. *See Diamond Alternative Energy*, 145 S. Ct. at 2130-31. Congress itself recently disapproved California's preemption waivers for Clean Trucks and Omnibus. *See* Pub. L. No. 119-15, 139 Stat. 65 (Clean Trucks); Pub. L. No. 119-17, 139 Stat. 67 (Omnibus).

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

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

The bottom line is that CARB's adoption and submittal to OAL of the Emergency Regulation prior to seeking and receiving the necessary preemption waiver is a clear violation of the CAA

C. The Regulation Cannot Satisfy the CAA Section 209(b) Waiver Criteria

The Emergency Regulation also is invalid because its proposed standards cannot satisfy the criteria for a preemption waiver under the CAA. Among other things, CAA sections 202 and 209 require CARB to provide at least four years of lead time before enforcing any new set of MHD emission standards. See 42 U.S.C. §§ 7543(b)(1)(C), 7521(a)(3)(C). In this case, however, CARB provided ***no lead time whatsoever***. CARB maintains that the amended "antecedent" standards became immediately effective on September 22, 2025 "upon the original filing with OAL." The lack of any leadtime precludes EPA from issuing any preemption waiver in this case, even if CARB were to seek one.

In addition, EPA will only consider CARB's amendments to previously approved emission standards to be "within the scope of a previously granted waiver" if they do not undermine the determination that California's standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards, do not create any inconsistency with section 202(a) of the CAA, and do not raise any new issues affecting EPA's previous waiver decision. "California State Motor Vehicle Pollution Control Standards; Within the Scope Determination and Waiver of Preemption Decision for Amendments to California's Zero-Emission Vehicle (ZEV) Standards," 76 Fed. Reg. 61095 (Oct. 3, 2011). Because CARB's "antecedent" standards, however, are: (i) less stringent than the corollary federal standards for MY 2027; (ii) inconsistent with the lead time requirements of CAA section 202(a) of the CAA; and (iii)

foreclosed in any event by the CRA legislation enacted in 2025, they are completely disqualified from receiving any preemption waiver.

CARB Has No Authority for its Continuing Threats of Retroactive Enforcement

CARB is continuing its threat to enforce the Omnibus/ACT standards retroactively notwithstanding their nullification, in the event that the federal courts determine as a final matter that the duly-enacted CRA legislation is somehow invalid. By doing so, CARB is attempting to compel compliance with MHD emission standards no longer in effect as a matter of law. Such threatened retroactive enforcement is heavily coercive. In the face of CARB's threats, manufacturers face the dilemma of complying with the regulations that Congress has voided, thereby acting in contravention of federal law, or not complying with the Omnibus or ACT regulations, which creates the specter of heavy fines and other enforcement actions during any interim period that might lead up to a final successful litigation outcome for CARB in the future. Administrative law has a strong presumption against any form of retroactivity, and retroactive penalties would be especially unreasonable and unlawful in this case. CARB has no authority to retroactively enforce its now-void Omnibus and ACT emission standards.

Conclusion

The federal CRA legislation preempted and precluded CARB from adopting or attempting to enforce any prior or future version of the Omnibus and ACT regulations. Similarly, as EPA stated directly to CARB, any attempts to adopt or implement "antecedent" MHD emission standards where such standards previously lapsed and needed to be amended require a new preemption waiver that CARB did not request or receive.

The net result is that CARB's Emergency Regulation remains preempted, unlawful, and unenforceable. Accordingly, OAL should promptly disapprove the Emergency Regulation.

Respectfully Submitted,

TRUCK AND ENGINE
MANUFACTURERS ASSOCIATION