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RE: WSPA and AFPM Comments on CARB's Proposed Readoption of Emergency Amendment and Adoption of Emergency Vehicle Emissions Regulations

The Western States Petroleum Association (WSPA) and the American Fuel and Petrochemical Manufacturers (AFPM) appreciate the opportunity to comment on the California Air Resources Board's (CARB's or Agency's) proposed readoption of emergency amendment and adoption of vehicle emissions regulations (Emergency Vehicle Emissions Regulation).[1]

WSPA is a non-profit trade association that represents companies that safely explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, Washington, Oregon, Nevada, and Arizona. WSPA has been an active participant in air quality planning issues for over 30 years. WSPA's members produce approximately 42 million gallons of gasoline and 10 million gallons of diesel a day to support California's 35 million registered vehicles. AFPM is a national trade association representing nearly 90% of U.S. refining capacity. AFPM members proudly produce the gasoline, diesel, jet fuel, and thousands of other products that fuel the U.S. economy and make modern life possible.

CARB initially adopted the Emergency Vehicle Emissions Regulations on September 15, 2025, which became effective October 2, 2025. Pursuant to Section 11346.1(e), these regulations are currently set to expire on April 1, 2026. CARB is now proposing an additional 90-day readoption, which would extend the effectiveness of the Emergency Vehicle Emissions Regulations from April 1, 2026, to June 30, 2026. According to CARB, the "emergency circumstances that led to the adoption of the emergency rulemaking remain substantially unchanged," and the Agency does not propose any changes to the regulatory text.

The Emergency Vehicle Emissions Regulations were initially adopted in response to Congress' disapproval, pursuant to the Congressional Review Act (CRA), of three federal preemption waivers previously granted to California by the U.S. Environmental Protection Agency (EPA) under Section 209 of the Clean Air Act (CAA) (collectively, the Waiver Disapproval Resolutions).[2]

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[1] CARB. 5-Day Public Notice and Comment Period, Readoption of Emergency Amendment and Adoption of Vehicle Emissions Regulations ("Emergency Amendments Readoption Notice"). March 6, 2026. Available at: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/emergencyvehemissions/readoptnotice1.pdf.

[2] *See id.* at 1–2. *See also* H.J. Res. 87; H.J. Res. 88; H.J. Res. 89; Statement by the President (June 12, 2025), https://www.whitehouse.gov/briefings-statements/2025/06/statement-by-the-president/.

These waivers purported to provide CARB with authority to enforce its Advanced Clean Cars II (ACC II), Advanced Clean Trucks (ACT), and Heavy-Duty Vehicle and Engine "Omnibus" Low NOx (Omnibus) regulations.[3] The Waiver Disapproval Resolutions, signed into law by the President of the United States on June 12, 2025, are currently being challenged in litigation filed by the State of California that same day.[4] These waivers, along with the Advanced Clean Cars I (ACC I) waiver, are the subject of separate litigation initiated prior to the CRA. The litigation challenging these waivers asserts that these waivers violate the major questions doctrine and are otherwise unlawful under CAA Section 209.[5]

CARB adopted the Emergency Vehicle Emissions Regulations to confirm that, until a court resolves the validity of the Waiver Disapproval Resolutions, certain antecedent regulations remain operative as previously adopted.[6] Accordingly, CARB amended its regulations to clarify that the following regulations remain operative: the criteria pollutants provisions of the Low Emission Vehicle (LEV) III regulations, adopted as part of the ACC I regulations; associated on-board diagnostic requirements; and the provisions in CARB's antecedent medium- and heavy-duty Omnibus regulations. According to CARB, these amendments were needed "to clarify that protective emission standards for vehicles and engines remain operative, while ensuring manufacturers can sell vehicles and engines into California despite the emergency the federal government has created through unconstitutional congressional resolutions targeting certain preemption waivers."[7] CARB further asserted that the Emergency Vehicle Emissions Regulations would allow the Agency to enforce ACC II and Omnibus requirements, "to the extent permitted by law, in the event a court of law holds invalid the resolution purporting to disapprove those waivers."[8]

These actions themselves are unconstitutional and contrary to law. As explained in our previous comment letter on CARB's proposed adoption of the Emergency Vehicle Emissions Regulations,[9] WSPA and AFPM disagree with CARB's determination that an "emergency" exists justifying the use of abrogated rulemaking procedures pursuant to Cal. Gov't Code § 11346.1. WSPA and AFPM further reiterate the following additional concerns:

- State GHG emission standards and EV mandates are preempted by Section 32919 of the Energy Policy and Conservation Act (EPCA), since they are "related to" fuel economy standards.

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[3] *See* 42 U.S.C. § 7543 (prohibiting states from "adopt[ing] or attempt[ing] to enforce vehicle emissions standards without a valid waiver).

[4] *California v. United States*, No. 4:25-cv-04966 (N.D. Cal.).

[5] *See* Pet'rs' Br., *Am. Fuel & Petrochemical Mfr., et al. v. EPA*, No. 22-01084 (D.C. Cir., Oct. 24, 2022); W. States Petrol. Ass'n et al. Br. for *Amicus Curiae* in Supp. of Pet'rs, *Am. Fuel & Petrochemical Mfr., et al v. EPA*, No. 22-01084 (D.C. Cir., Oct. 31, 2022).

[6] Emergency Amendments Readoption Notice, at 1.

[7] *Id*.

[8] *Id.*

[9] *See* WSPA Comments on CARB's Proposed Emergency Amendment and Adoption of Emergency Vehicle Emissions Regulations ("2025 WSPA Comments"). September 26, 2025. Available at: https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid377/did200185/pid_212497/assets/merged/ta0pipjewaf_document.pdf?v=14109.

- CARB cannot extend enforcement of requirements under LEV III and the antecedent medium- and heavy-duty Omnibus regulations without obtaining a valid, updated federal preemption waiver or a determination that the extended enforcement is "within the scope" of a prior, valid waiver.

- CARB is not merely ensuring "certain antecedent regulations (displaced by Advanced Clean Cars II and Omnibus) remain operative (as previously adopted),"[10] but is instead improperly extending zero emission vehicle (ZEV)[11] standards under ACC I beyond their regulatory applicability date.[12]

- CARB is improperly attempting to enforce voided ACC II requirements by effectively compelling original equipment manufacturers (OEMs) to comply.

Accordingly, WSPA and AFPM urge CARB not to readopt this emergency regulation.

1. CARB's delay in addressing the Waiver Disapproval Resolutions does not constitute an "emergency."

CARB seeks to readopt the Emergency Vehicle Emissions Regulations pursuant to Cal. Gov't Code § 11346.1, which provides for a truncated rulemaking process with very limited public engagement. Under these procedures, stakeholders have only five calendar days to submit comments and do not have an opportunity to engage with CARB at any workshops or hearings. For this reason, state agencies may utilize this expedited process only in an "emergency," defined as "a situation that calls for immediate action to avoid *serious* harm to the public peace, health, safety, or general welfare."[13] The agency must show, based on *substantial evidence*, that such an emergency exists to justify its rulemaking action.[14] The Office of Administrative Law (OAL) has previously disapproved emergency regulations that fail to adequately justify "the existence of an emergency" and the "need for immediate action."[15] As elaborated in its previous comment letter,[16]

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[10] *Id.* at 1.

[11] The term "zero-emission vehicle" is not accurate, as it refers only to tailpipe emissions and does not account for the full spectrum of emissions associated with such vehicles. When considered from a life cycle perspective, ZEVs generate substantial greenhouse gas emissions during battery manufacturing, critical mineral extraction, and electricity generation. Additionally, ZEVs may produce higher levels of non-exhaust particulate matter emissions from tire wear and road dust resuspension due to their increased vehicle weight.

[12] While ACC I's greenhouse gas emission standards "remain in force indefinitely," "the specific requirements for electric vehicles in new vehicle fleets run through model year 2025." *Diamond Alt. Energy, LLC v. EPA*, No. 24-7, at 4 (Jun. 20, 2025).

[13] Cal. Gov't Code § 11342.545 (emphasis added).

[14] Cal. Gov't Code § 11346.1(b)(2) (requiring agency to prepare a written statement containing "a description of the specific facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating by *substantial evidence*, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency" (emphasis added)). The agency must also "identify each technical, theoretical, and empirical study, report or similar document" upon which it relies. *Id.*

[15] *See, e.g.*, Decision of Disapproval of Emergency Regulatory Action, OAL File No. 07-0119-02 E.

[16] *See* 2025 WSPA Comments.

WSPA and AFPM maintain that CARB falls far short of this standard—particularly with respect to this proposed readoption of the Emergency Vehicle Emissions Regulations.

First, the possibility of future uncertainty in the vehicle market does not rise to the level of "serious harm" required by Section 11346.1. Regulatory and market uncertainty is a common feature of ongoing litigation and does not, standing alone, justify emergency rulemaking.

CARB continues to argue that an emergency exists because the Waiver Disapproval Resolutions "introduced an unprecedented degree of uncertainty into the California market for new motor vehicles."[17] But CARB had ample opportunity to address the Waiver Disapproval Resolutions through nonemergency rulemaking procedures before initially adopting the Emergency Vehicle Emissions Regulations, and even more so now, at the time of this proposed readoption. Pursuant to Section 11346.1(b)(2), an agency must "explain[] the failure to address the situation through nonemergency regulations" if the identified situation "existed and was known by the agency adopting the emergency regulation in sufficient time to have been addressed through nonemergency regulations." Here, CARB has been aware of the Waiver Disapproval Resolutions since at least May 22, 2025, when the United States Senate joined the U.S. House of Representatives in adopting these three resolutions.[18] CARB has also been aware of the potential for legal challenges to these resolutions, as California promptly challenged the Waiver Disapproval Resolutions the same day they were signed into law.[19] Moreover, California still has not elected to pursue a preliminary injunction, which would have sought to stay the CRA disapproval resolutions and preserved the status quo pending resolution of the litigation. CARB's failure to seek this type of relief from the court is additional evidence that there is no emergency and that CARB is unlikely to prevail on the merits of this litigation. In any event, subsequent litigation developments are not the kind of "dynamic" challenges that constitute an emergency.[20]

CARB's prolonged delay in pursuing permanent regulatory solutions is inconsistent with the urgency that emergency rulemaking is designed to address. Rather than adopting interim requirements or clarifying the applicability of antecedent regulations through a formal rulemaking process, CARB has not acted for over *nine months*, with no indication that it intends to initiate such a process. Instead, CARB continues to argue that the "emergency" necessitating this rulemaking is in response to a court filing made by vehicle manufacturers over six months ago asserting that "CARB's earlier-adopted vehicle certification requirements . . . are invalid because

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[17] Emergency Amendments Readoption Notice, at 3.

[18] H.J. Res. 87; H.J. Res. 88; H.J. Res. 89. *See also* Emergency Amendments Readoption Notice, at 2 (explaining that the "congressional resolutions have introduced an unprecedented degree of uncertainty into the California market for new motor vehicles").

[19] Complaint, *California v. United States*, No. 4:25-cv-04966 (N.D. Cal., Jun. 12, 2025); *see also* Statement by the President (June 12, 2025), https://www.whitehouse.gov/briefings-statements/2025/06/statement-by-the-president/. And in fact, given that California filed its 40-page Complaint the same day that the President signed the Waiver Disapproval Resolutions, CARB was clearly aware of the potential for litigation well before that.

[20] *Compare W. Growers Ass'n v. Occupational Safety & Health Standards Bd.*, 73 Cal. App. 5th 916, 940–41 (2021) (noting that the scope and impact of the coronavirus pandemic did not exist and were not known to an agency in sufficient time to be addressed through nonemergency regulations, because the question of restrictions on activities during a pandemic is a dynamic and fact-intensive matter).

those requirements became 'defunct' when the more recent, more stringent standards displaced them."[21] CARB has been aware of the underlying circumstances of the Waiver Disapproval Resolutions and the litigation challenging them since May 2025. If readopted, the Emergency Vehicle Emissions Regulations extend the effectiveness of the Emergency Vehicle Emissions Regulations to June 30, 2026—*over a year* after Congress passed the Waiver Disapproval Resolutions. Indeed, CARB has repeatedly sought to delay resolution of ongoing litigation that could have provided additional regulatory clarity by seeking briefing extensions and requesting abeyance of challenges to the validity of the federal waivers for its antecedent regulations.[22]

There is no concrete immediate threat of serious harm, and the nine months that have passed since the Waiver Disapproval Resolutions confirms as much. Additionally, speculative and contingent concerns do not meet the regulatory definition of an emergency. CARB's stated concern is that, if a court accepted the vehicle manufacturers' interpretation that the antecedent requirements are no longer valid, CARB might need to revive earlier standards through regulatory action. However, the continuing validity of CARB's antecedent regulations beyond 2025 has not been finally resolved, and there is no indication that such a court decision is imminent. CARB has ample time to address interim requirements pending a final decision on the validity of the Waiver Disapproval Resolutions through a full rulemaking proceeding.

The emergency procedures in Section 11346.1 are not a suitable or valid means for CARB to establish appropriate interim requirements. Moreover, the short duration of emergency regulations is unlikely to provide the certainty needed for the vehicle market, especially when lead times and production can be lengthy. An emergency regulation may remain in effect for no more than 180 days unless the Agency initiates and completes formal rulemaking on the issue before or during that 180-day period.[23] While CARB may be granted up to two extensions of the emergency regulation, each may not exceed 90 days.[24] CARB's Emergency Vehicle Emissions Regulations can only be in effect for a maximum of 360 days, but there is no guarantee that the validity of the Waiver Disapproval Resolutions will be resolved within that timeframe—especially if California's effort to have that question litigated first in district court (as opposed to directly in the Ninth Circuit) is successful. This haphazard approach to rulemaking is plainly inadequate.

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[21] Emergency Amendments Readoption Notice, at 4; *see also* Pl. Mot. For Leave to File Reply in Support of Mot. For Admin. Relief to Expedite, *Daimler Truck North Am. LLC v. CARB*, No. 2:25-cv-02255-DC (Sep. 4, 2025), at Exh. 1, page 2 n.3.

[22] *See e.g.,* State Movant-Intervenors' Cross-Mot. for Abeyance & Resp. to EPA's Mot. to Dismiss, *Am. Free Enter. Chamber of Com. v. EPA*, No. 25-01493 (9th Cir., Sept. 8, 2025) (requesting abeyance of action regarding preemption waiver for ACC II regulations pending final disposition of two U.S. district court challenges to the congressional resolutions). *See also* Movant-Intervenor States' Cross-Mot. for Extension of Time to File Resp. to Motion to Dismiss, *Am. Free Enter. Chamber of Com. v. EPA*, No. 25-01493 (9th Cir., Aug. 18, 2025) (requesting a 30-day extension); Defendant's Mot. for Administrative Relief to Extend Case Mgmt. Deadlines, *Daimler Truck North Am. LLC v. CARB*, Case No. 2:25-cv-02255 (E.D. Cal., Jan. 26, 2026) (requesting a vacatur and stay the deadline for the parties to confer under Federal Rule of Civil Procedure 26 and Local Rule 240(b)).

[23] *See* Cal. Gov't Code § 11346.1(e).

[24] *See id.*

2. CARB has not obtained the required federal waiver for the antecedent regulations.

Section 209(a) of the CAA prohibits states from "adopt[ing] or attempt[ing] to enforce any standard relating to the control of emissions from new motor vehicles."[25] While California may apply for a waiver from EPA allowing it to adopt such standards under CAA Section 209(b),[26] in the absence of such a waiver, the general prohibition applies.[27] CARB's adoption and proposed readoption of the Emergency Vehicle Emissions Regulations included emission standards that are not subject to a current, valid federal waiver, and these standards are therefore preempted.

CARB continues to claim that the Emergency Vehicle Emissions Regulations are not preempted because they fall within the scope of prior federal waivers. However, as WSPA and AFPM first explained in their previous comment letter,[28] waivers do not automatically extend to amendments of standards with previous waivers granted. While EPA's waiver analysis recognizes that standards with previous waivers granted may need to be amended or enforced in new ways and that these revised standards may fall "within the scope" of the prior waiver,[29] such revisions are still subject to review to determine whether the amendments introduce any ''new issues'' that could affect EPA's previous waiver determination.[30] CARB's attempt to revive (and extend) now-defunct regulatory requirements that were superseded by subsequent regulations raises precisely the kind of "new issues" that EPA is required to review. Indeed, CARB's longstanding practice has been to seek a "within the scope" determination from EPA under these circumstances,[31] yet CARB has arbitrarily departed from this past practice. CARB cannot circumvent EPA's review in this manner.

Furthermore, not all of the proposed emergency standards are based on antecedent regulations with approved federal waivers. CARB is proposing to readopt regulations governing on-board diagnostic (OBD) systems for heavy-duty vehicles, which apply to the self-diagnostic systems incorporated into vehicle computers to monitor vehicle and engine components that can impact emissions performance.[32] However, CARB has not obtained a waiver for its OBD standards since

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[25] 42 U.S.C. § 7543(a).

[26] *See* 42 U.S.C. § 7543(b).

[27] *See Central Valley Chrysler-Jeep v. Witherspoon*, 456 F.Supp.2d 1160, 1174 (E.D. Cal. 2006) (emphasizing that "regulations are preempted unless the EPA issues a waiver under section 209(b)").

[28] *See* 2025 WSPA Comments.

[29] *See, e.g.*, California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision, 88 Fed. Reg. 20,688, 20,689 (Apr. 6, 2023) ("If California acts to amend a previously waived standard or accompanying enforcement procedure, the amendment may be considered within the scope of a previously granted waiver provided that it does not undermine California's determination that its standards in the aggregate are as protective of public health and welfare as applicable Federal standards, does not affect the regulation's consistency with section 202(a) of the Clean Air Act, and raises no new issues affecting EPA's previous waiver decisions.")

[30] *Id.* at 20,695.

[31] *See* 79 Fed. Reg. 30,610 (May 28, 2014) (seeking a within-the-scope determination for CARB's spark-ignited Small Off-Road Engines (SORE) amendment to prior regulations); 69 Fed. Reg. 5,542 (Feb. 5, 2004) (seeking a within-the-scope determination for CARB's California State Motor Vehicle Pollution Control Standards amendment to prior regulations).

[32] *See* CARB. Appendix A-2-1, Proposed Regulation Order: Emergency Vehicle Emissions Regulations Part I. Available at: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/emergencyvehemissions/app_a-2-1pt1final.pdf. *See also* Cal. Code Regs. tit. 13, § 1971.1.

2016, which only covered amendments to the rule through 2013.[33] CARB last amended the OBD regulation in 2019, which goes beyond the scope of the 2016 waiver.[34] Because the later amendments lack waivers or determinations that they are within the scope of an existing waiver, the standards currently adopted under California law are preempted under Section 209.

The lack of proper waivers for these standards is not cured by recent federal regulatory developments. Since CARB initially proposed the Emergency Vehicle Emissions Regulations, EPA has published a final rule rescinding its 2009 final rule promulgated under Section 202(a) of the CAA that found that the combined atmospheric concentrations of six key "well-mixed" greenhouse gases endanger the public health and welfare (2009 Endangerment Finding).[35] However, the repeal of the 2009 Endangerment Finding has no impact on the Section 209(b) waiver preemption requirements or process. Regardless of EPA's position on the underlying endangerment determination, the Section 209(b) preemption waiver process continues to serve as a federal check on inconsistent and conflicting state standards and takes into account whether they meet the compelling and extraordinary conditions under the CAA.

3. The Emergency Vehicle Emissions Regulations are preempted by the Energy Policy and Conservation Act.

WSPA and AFPM note that the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), has recently filed a federal lawsuit seeking to have CARB's carbon dioxide (CO2) emissions standards for light-duty vehicles and Zero-Emission Vehicle (ZEV) mandates declared unlawful. These regulations, which relate to fuel economy standards for light-duty vehicles, were adopted under the ACC I program and reaffirmed through the Emergency Vehicle Emissions Regulations. In the lawsuit, DOJ and DOT contend that these regulations are preempted by the Supremacy Clause of the U.S. Constitution and Energy Policy and Conservation Act (EPCA), which prohibits states from adopting or enforcing any regulation "related to fuel economy standards."[36]

WSPA and AFPM support this legal challenge and maintain that these regulations are invalid and their enforcement should be enjoined, irrespective of the status of any EPA waiver. A waiver under CAA Section 209 exempts CARB only from Clean Air Act preemption. Unlike CAA Section 209, Congress did not provide NHTSA or any other federal agency, with the authority to waive EPCA preemption, which remains fully applicable regardless of any EPA waiver. Accordingly, CARB should not readopt the Emergency Vehicle Emissions Regulations given the apparent illegality of the underlying requirements under EPCA.

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[33] *See* Notice of Decision, Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model Year Heavy-Duty Engines, 81 Fed. Reg. 78149 (Nov. 7, 2016).

[34] CARB. Heavy-Duty On-Board Diagnostic System Requirements 2018. Available at: https://ww2.arb.ca.gov/rulemaking/2018/heavy-duty-board-diagnostic-system-requirements-2018 (documenting adoption of standards on Oct. 3, 2019).

[35] 91 Fed. Reg. 7,686 (Feb. 18, 2026).

[36] 49 U.S.C. § 32919.

4. The zero-emission vehicle (ZEV) mandate under the ACC I program cannot be extended beyond 2025.

The Emergency Vehicle Emissions Regulations adopted Section 1962.2.1, which purports to extend ACC I's ZEV standards for "2018 and *subsequent model year* passenger cars, light-duty trucks, and medium-duty vehicles as ZEVs."[37] However, CARB amended ACC I's ZEV requirements for new vehicle fleets to expressly limit these requirements to model years 2015 through 2025 when it adopted ACC II.[38] The State of California has explicitly acknowledged this limitation in recent court filings.[39] CARB cannot reverse these amendments and extend ACC I's ZEV requirements through an abrogated proceeding, whether in the initial proposal or in this readoption action.

5. CARB is improperly attempting to enforce voided ACC II and Omnibus requirements.

CARB reiterates in the readoption of the Emergency Vehicle Emissions Regulations that it is "continu[ing] to accept and process certification applications for the LEV IV and Omnibus emission standards" and that "[r]egulated parties may choose to follow either the LEV IV or Omnibus standards or the antecedent LEV III and pre-Omnibus provisions."[40] However, CARB repeats that it "may enforce the more recently adopted LEV IV requirements (adopted as part of ACC II) to the extent permitted by law, in the event a court of law holds invalid the resolution purporting to disapprove that waiver," and declares that "[r]egulated parties . . . *assume the risk* if they choose to certify only to the antecedent provisions."[41]

By signaling to OEMs that compliance only with the preexisting standards poses a retroactive risk, CARB is effectively compelling OEMs to comply with the requirements of the ACC II program and Omnibus standards *now*, even though these requirements have effectively been voided by the Waiver Disapproval Resolutions and are not legally enforceable at this time. The CAA explicitly prohibits any "*attempt* to enforce any standard" relating to a state emissions standard that lacks a lawful preemption waiver,[42] and any such "attempt" includes preliminary acts that fall short of an enforcement action for penalties.[43] CARB's continued attempt to enforce these standards despite its lack of authority violates the Supremacy Clause.

CARB's persisting suggestion that it may enforce preempted requirements under ACC II and Omnibus retroactively if it prevails in its challenge to the Waiver Disapproval Resolutions is

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[37] CARB. Appendix A-2-2, Proposed Regulation Order: Emergency Vehicle Emissions Regulations Part II, 113. Available at: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/emergencyvehemissions/app_a-2-2final.pdf.

[38] Cal. Code Regs., tit. 13, § 1962.2(b)(1)(A) (2022).

[39] *See* Brief for the State Respondents, *Diamond Alt. Energy, LLC v. EPA*, No. 24-7 (U.S., Mar. 12, 2025) (acknowledging that "California amended the ZEV standards…to expire after model year 2025").

[40] Emergency Amendments Readoption Notice, at 2.

[41] *Id.* (emphasis added).

[42] 42 U.S.C. § 7543(a) (emphasis added).

[43] *See* Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 541 U.S. 246, 257 (2004).

contrary to law. Agencies may not retroactively enforce requirements without clear legislative authorization, which CARB is lacking.[44] In addition, the possibility of retroactive enforcement introduces significant regulatory uncertainty, which is the very issue the Agency purports to address through the Emergency Vehicle Emissions Regulations. This uncertainty places undue and unwarranted pressure on manufacturers to conform to standards that currently lack a valid legal basis, thereby undermining the principles of due process and fair administrative process.[45] Such conduct not only disrupts the regulated community's ability to plan and operate in accordance with clear and lawful requirements, but also risks eroding public confidence in the integrity of the regulatory process. CARB should ensure that all regulatory requirements are properly promulgated and legally effective before seeking industry compliance.

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WSPA and AFPM appreciate the opportunity to provide these comments and urge CARB not to finalize the readoption of Emergency Vehicle Emissions Regulations. Please do not hesitate to contact WSPA's General Counsel, Sophie Ellinghouse (sellinghouse@wspa.org) or AFPM's Senior Director, Fuel and Vehicle Policy, Fred Turatti (fturatti@afpm.org) with any questions.

Sincerely,

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[44] *See, e.g.*, *Sacks v. SEC*, 648 F.3d 945, 951 (9th Cir. 2011) (emphasizing that the "presumption against retroactive legislation is deeply rooted in our jurisprudence" due to considerations of fairness and explaining that retroactive application requires "clear congressional intent") (citations omitted).

[45] For a more detailed discussion of OEM hardship, *see* Pls.' Notice & Mot. for Prelim. Inj. & Mem. of P. & A., *Daimler Truck North Am. LLC v. CARB*, Case No. 2:25-cv-02255 (Aug. 12, 2025).