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COMMENT – ON:

- **CARB Emergency Amendment and Adoption of Vehicle Emissions Regulations | California Air Resources Board (Executive Order R-25-002; September 15, 2025); OAL FILE 2025-0922-01E**

Dear Sir or Madam:

Vehicle Services Consulting, Inc. (VSCI) files this comment in response to the California Air Resources Board's (CARB) posting on the Office of Administrative Law (OAL) web page on September 22, 2025 of the CARB Emergency Amendment and Adoption of Vehicle Emissions Regulations. See CARB proposed regulations -- Emergency Amendment and Adoption of Vehicle Emissions Regulations | California Air Resources Board; See also OAL web page with link -- https://oal.ca.gov/emergency_regulations/Emergency_Regulations_Under_Review/?utm_medium=email&utm_source=govdelivery (hereafter "Emergency 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of law, once the President signs a CRA resolution passed by both Houses of Congress, the federal agency regulations rescinded by such resolution become null and void, unless and until a court case is filed challenging the validity of CRA resolution, ***AND***: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" have occurred. Accordingly, at the present time, the ACC II regulations do not exist.

3. **In such absence of ACC II regulations, which were scheduled to go into effect starting with MY 26 (though SVMs have a separate timetable), 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 promulgate the Emergency Regulations in OAL file 2025-0922-01E. From the point of view of light-duty *SVMs*, the key provisions in the Emergency 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.

4. **But CARB's caveat language is impermissible:** *CARB has qualified the "opportunity" to certify to the ACC I /LEV III regulations with the following impermissible caveat language:*

"until the federal courts finally resolve the uncertainty created by the federal government's rescission of the ACC II waiver, the antecedent LEV III 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 resolution purporting to disapprove those waivers."
CARB 5-Day Public Notice.

> "CARB staff is proposing to amend its regulations to clarify that the criteria pollution provisions of the LEV III regulation (adopted as part of ACC I) and associated on-board diagnostic requirements remain operative, with the caveat that CARB 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" **Id**.

In the actual Emergency Regulations, CARB is seeking to amend various ACC I/LEV III regulatory sections to include the following caveat statement (the below is the statement from 13 CCR 1961.2.)

> 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 [old LEV III which terminated in MY 2025} or section 1961.2.1 [new LEV III which does not terminate in MY 2025].
>
> 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.[1]

In short, CARB is saying in its Emergency Regulations 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 disappears *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 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?

[1] Note that this impermissible caveat also appears in MAC 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. This is unjust.

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 inclusion of the caveat in the Emergency Regulations is no more than a thinly veiled attempt by CARB to compel OEMs to certify to the defunct ACC II/LEV IV regulations. As long as the caveat language exists, the ACC I/LEV III "option" is illusory.

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 LEV IV … or the antecedent LEV III** …. *Regulated parties, however, assume the risk if they choose to certify only to the antecedent provisions, and the congressional resolutions disapproving the waivers of federal preemption under the Clean Air Act are declared invalid*. (Emphasis added.) **CARB 5-Day Public Notice**.

But regulated parties in fact DO NOT HAVE A CHOICE. By including of the caveat language in the Emergency Regulation, CARB is offering only ONE real pathway -- certification to the now-defunct LEV IV rules..

A regulatory "option" is an option only if OEMs can count on it, make important business plans based on it. 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 only a "possibility" (because LEV III would a certification pathway that can be counted on **only if CARB loses the litigation** contesting the CRA resolution.)

For the above reasons, the caveat language must be removed from the Emergency Regulations.

5. **The Need for SVM LEV IV lead-time** -- In addition, if CARB wins in the current waiver rescission lawsuit – and LEV IV is resurrected -- SVMs need to be assured of adequate lead-time to certify to LEV IV.

   VSCI requests that CARB incorporate in the Emergency Regulation a provision giving SVMs until 24 calendar months after the 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).

6. **The Emergency Regulations should include BOTH of the two alternative certification pathways set forth in MAC 2025-08**. The Emergency Regulations do not

mention CARB MAC ECCD 2025-08. In this Advisory Correspondence, 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.)

Option (1)(a) is the LEV III certification pathway laid out in the Emergency Regulations. BUT THE EMERGENCY REGULATIONS DO NOT AT ALL MENTION OPTION 2 AS SET FORTH IN MAC 25-8. As seen above, 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 in the Emergency Regulations is 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 Emergency Regulations 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 new LEV III regulations (e.g. 13 CCR 1961.2.1).[2]

In conclusion:

- WITHOUT THE IMPERMISSIBLE CAVEAT, the CARB Emergency Regulations' pathway allowing certification to ACC I/LEV III (2012) regulations would indeed be reasonable. But with the caveat language, CARB is only offering an LEV III option that could be retroactively withdrawn. This is not only inequitable and misleading, it also fails to achieve the goal that CARB clearly stated is behind the Emergency 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 requested SVM lead-time discussed above should be incorporated into the Emergency Regulations.

[2] We again note that MAC 25-08 includes the impermissible caveat. It states: "Manufacturers choosing to [certify to [the alternative pathways (1) and (2)] 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."

- The EPA certification pathway set forth in Option 2 in MAC 25-8, as described above, should also be incorporated into the Emergency Regulations via a "deemed to comply" provision, without the impermissible caveat language.

Sincerely,

Lance Tunick

Lance Tunick
President