



September 16, 2024

Via Email (a-and-r-docket@epa.gov)

Mr. William Charmley
Director, Assessments and Standards Division
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
EPA Docket Center, OAR
Docket EPA-HQ-OAR-2023-0589
Mail Code 28221T
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re: Comments for Environmental Protection Agency Action on California Air Resources Board's Request for Clean Air Act Waiver of Preemption and Authorization

Dear Mr. Charmley:

The American Bus Association (“ABA”), appreciates the opportunity to submit comments on the California Air Resources Board’s (“CARB”) request for a waiver of Clean Air Act (“CAA”) preemption and authorization for the Advanced Clean Fleets regulation (“ACF”).¹ Because the ABA believes that ACF is improperly addressed to commercial buses and motorcoaches and does not meet the requirements for a waiver of preemption under CAA section 209(b), we respectfully ask the Environmental Protection Agency (“EPA”) to decline to grant a waiver and authorization to CARB for ACF.

The ABA is a national trade association representing the commercial bus and motorcoach industry, including both vehicle manufacturers and vehicle operators, and those businesses who support motorcoach operations. Additionally, ABA also represents entities, both public and private, who rely on motorcoach operations and their passengers. The commercial bus and motorcoach industry includes vehicles such as intercity buses and motorcoaches also referred to as over-the-road buses (OTRBs). Some of these OTRBs are classified as two axle vehicles while others are three axle and unlike their transit bus counterparts, these vehicles are typically classified as Class 8, heavy-duty vehicles. These vehicles by design help reduce emissions and mitigate congestion by removing single passenger vehicles from the road (up to 35 single-passenger vehicles/bus), routinely operating long distances. These vehicles are also a primary provider of transportation services to rural and environmental justice communities. Many of ABA’s members will be directly regulated by ACF and the benefits of their operations will be

¹ Environmental Protection Agency, Advanced Clean Fleets Regulation Request for Waiver of Preemption and Authorization; Opportunity for Public Hearing and Comment, 89 Fed. Reg. 57151 (July 12, 2024).

lost if they are required to reduce or quit operations in California due to ACF's mandates, and if ACF is adopted by other states under CAA section 177, impacts to the bus industry will be severe.

I. Background on the Advanced Clean Fleets Regulation and its Approach to Buses.

CARB's Board adopted ACF on April 28, 2023, received final Office of Administrative Law approval for the regulation on September 29, 2023, and the regulation became effective on October 1, 2023. Because ACF has compliance deadlines as early as January 1, 2024, CARB left no time to obtain a waiver of preemption and authorization from EPA before ACF's deadlines came into effect. CARB did this despite knowing that historically EPA takes many more than 3 months to approve a waiver request, and while refusing to shift the compliance dates in ACF, as requested by numerous commenters during the rulemaking process. While CARB characterizes ACF as one in a long line of rules setting more stringent emissions standards for vehicles, in fact ACF is the first of a new category of regulation, controlling what fleet operators can purchase and operate in California. ACF represents a major departure from CARB's long line of emissions standards directed only at manufacturer operations and sales and, by virtue of regulating operations, requires more available technology than just vehicles in order to be feasible.

In its rulemaking materials, CARB demonstrated its lack of understanding of the various types of buses that operate in the U.S. First, CARB largely exempted transit buses and school buses from ACF yet granted no exemption for motorcoaches.² Second, in many places CARB appears to confuse motorcoaches with transit buses or merely to not mention motorcoaches or intercity buses at all. Though buses and motorcoaches are introduced as categories in the Initial Statement of Reasons³, the rest of the document relies on information for trucks to conduct its analysis or combines trucks and buses when data is presented. *See, e.g.*, ISOR, p. 11 ("more than 590 ZE truck and bus models available"); p. 131 (discussing ways businesses can lower Total Cost of Operation for trucks and buses combined). Motorcoach is mentioned only 8 times in the document, 7 of which are in the paragraph on buses and motorcoaches mentioned above.

In some places CARB seems to forget that motorcoaches are even part of ACF when it conducts its analyses. *See, e.g.*, ISOR, pp. 181- (discussing up-front costs for fueling infrastructure and maintenance and dividing discussion into depot charging (which does not apply for motorcoaches due to distance of travel) and retail refueling for battery-electric vehicles by weight class in Table 40 (which only includes trucks)). When it does talk about buses, it often refers to transit agency vehicles. *See, e.g.*, ISOR, pp. 184 (discussing maintenance bay upgrades for buses). CARB's analysis thus lacks specificity with regard to the vehicles that ABA members own and operate.

II. EPA Cannot Grant a Waiver of Clean Air Act Preemption for ACF.

Even assuming EPA's review of California's ability to receive a CAA section 209 waiver for ACF is narrow, granting a waiver and authorization for ACF would represent a sea-change in

² ACF § 2015(c)(9), (c)(1).

³ CARB, Staff Report: Initial Statement of Reasons ("ISOR"), Aug. 30, 2022, [Proposed Advanced Clean Fleets Regulation Staff Report: Initial Statement of Reasons \(ca.gov\)](#), p. 49.

mobile source emissions control. No waiver has yet been granted for a regulation which (i) addresses fleet operations rather than manufacturer sales, and (ii) relies on a wholesale transformation of nationwide infrastructure in order to be feasible. For these reasons, EPA must take a hard look at the waiver requirements and consider them in light of the exceptional nature of ACF as a fleet rule which requires significant infrastructure in order to be technologically feasible, and the extraterritorial effects of ACF as compared to prior emissions reduction regulations adopted by CARB and ratified by EPA.⁴ These factors weigh against EPA merely providing a cursory review of CARB's rule and granting a waiver without investigation into the feasibility of the necessary infrastructure required to support wholesale electrification of mobile sources. **This waiver request must be rejected.**

a. ACF is inconsistent with CAA section 202(a).

i. ACF does not make the required technological determinations.

CAA section 202(a)(3)(A)(i) requires EPA to adopt vehicle emission standards which represent “[t]he greatest degree of emission reduction achievable *through the application of technology which the Administrator determines will be available for the model year to which such standards apply*, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology” (emphasis added). This analysis requires EPA to complete an exhaustive process in which it assesses the technologies that will be available in each model year in order to determine the emission reductions that are achievable.⁵

Here, rather than complete an assessment of the technologies available in each model year, CARB has chosen an emissions level (zero emissions) and then told fleet operators that they have to comply with that level regardless of technological or commercial availability. By allowing for zero emission vehicle unavailability exemptions, daily usage exemptions, and vehicle delivery delay extensions⁶, CARB has admitted it has not undertaken the analysis required by section 202 to determine in advance which technologies will be available for each class or category of vehicles in each model year. Instead, CARB forces regulated entities to themselves prove which vehicles are commercially unavailable and then petition CARB for an exemption.⁷ CARB frames its lack of analysis as “flexibility,” forcing covered owners to make

⁴ Though ACF will have significant extraterritorial effects due to the very low threshold of operating time in California necessary to consider a vehicle part of the California fleet, no state has yet adopted ACF under Clean Air Act 177 despite the fact that 10 states have adopted CARB's Advanced Clean Trucks (“ACT”) regulation and 9 states have adopted CARB's Low-NOx Omnibus (“Omnibus”) regulation under CAA section 177 (even though EPA has not yet issued a preemption waiver for Omnibus). See CARB, [States that have Adopted California's Vehicle Regulations | California Air Resources Board](#).

⁵ See, e.g., EPA, Final Rule for Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 74434, 74473-488 (Dec. 30, 2021) (assessing technical feasibility of final standards including projected target levels by manufacturer, projected per vehicle cost for each manufacturer, projections of EV and PHEV technology penetration rates, and explaining why the final standards are technologically feasible); see also EPA, Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis, Chapter 2: Technology Feasibility, Effectiveness, Costs, and Lead-Time, <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013ORN.pdf>.

⁶ ACF § 2015.3.

⁷ ACF § 2015.3(e).

their own determination as to what technology is available at the time of compliance subject to CARB's review.⁸

CARB's ISOR is devoid of the type of analysis that would typically accompany a regulation conducting the required technological assessment leading to development of an emissions standard. CARB states that it will maintain a list of vehicle configurations that are eligible for the exemption on the CARB Advanced Clean Fleets webpage, *i.e.*, vehicles that are commercially unavailable, but CARB states that it will only do so starting in 2025.⁹ CARB has turned the required technological assessment into an assessment of various regulated parties' statements about which vehicles are or are not commercially available, rather than the class by class assessment it is required to undertake.

Moreover, CARB has defined commercially available to mean a vehicle which is available to order or has had at least one model delivered to a customer.¹⁰ Commercially available typically means a technology is available for purchase within a reasonable time and at an ordinary commercial price. Many of the vehicles currently listed on CARB's table are open for order but are not being delivered in a reasonable time or at the amount ordered.¹¹

In addition, specific to motorcoaches, many of the vehicles currently listed on the table do not work for the applications needed by ABA's members. Specifically, the range of these vehicles is too low, leading to a wait to recharge for 4 or more hours during intercity transit or an extra overnight to recharge, and the baggage bay (luggage space) is severely limited due to battery size. CARB has not addressed any of these concerns in its rulemaking materials. Instead, CARB stated that "CARB is confident that ZEV technology will continue to improve and be able to provide the motorcoach industry with suitable ZEV options."¹² Zero emission vehicles ("ZEVs") which allow ABA's members to operate consistently with past operations do not exist, nor has CARB undertaken even a cursory analysis of whether they are likely to exist in 2027 when compliance under ACF is required.¹³

EPA, has considered the nuanced uses and types of "buses" and has completed a comprehensive assessment of whether it is technologically feasible to produce zero emission motorcoaches which meet the needs of the industry within the same timeframe as ACF's mandates. In its rulemaking for the Greenhouse Gas Emissions ("GHG") Standards for Heavy-Duty Vehicles – Phase 3, EPA discusses that it established optional custom chassis CO₂ emission standards for

⁸ ISOR, pp. 100, 269.

⁹ CARB, Advanced Clean Fleets Regulation Exemptions and Extensions Overview, [Advanced Clean Fleets Regulation Exemptions and Extensions Overview | California Air Resources Board](#); ("[s]tarting 2025, CARB will maintain a ZEV Purchase Exemption List with common vehicle body configurations that are not available to purchase as a ZEV or NZEV"); Letter from Steve Cliff, CARB Executive Officer to Chris Shimoda, California Trucking Association, Re: CTA v. CARB, dated Dec. 27, 2023, [CARB Letter to CTA Re: CTA v. CARB](#).

¹⁰ ISOR, pp. 9-10, 70, 91, 93, 98.

¹¹ CARB, [List of Certified ZEVs | California Air Resources Board](#).

¹² CARB, Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response ("FSOR"), April, 2023, pp. 72-73; *see also* FSOR, pp. 132-133 (stating that over time improved battery technology and proliferation of fast charging stations are expected to remedy many of the challenges raised by ABA in its comments on ACF), p. 184.

¹³ ACF § 2015.2(a).

coach buses in its Phase 2 GHG rule, due to the fact that manufacturers could have challenges meeting the typical standards.¹⁴ In formulating its Phase 3 rule, EPA determined that Battery Electric Vehicle (“BEV”) technology:

may not be suitable for applications during the model years at issue in this rulemaking, such as when the performance needs result in additional battery mass that prohibitively affects payload. In cases like this, the pathway considered either BEVs with smaller batteries, that may require en route charging and the consequent use of public charging away from the depot, or [Fuel Cell Emission Vehicles] FCEVs, which may have shorter refueling times than BEVs with large batteries. We considered FCEVs and BEVs using public charging in the technology packages for applications that travel longer distances and/or carry heavier loads (*i.e.*, for those that may be sensitive to refueling times or payload impacts). These included some coach buses and tractors.¹⁵

Due to the challenges with meeting the operational needs of motor coaches via ZEVs, EPA declined to adopt more stringent optional custom chassis standards for coach buses in its Phase 3 GHG rule.¹⁶ EPA specifically found that:

there are a variety of different applications of a coach bus. In some instances, it may be used for a day trip or for commuting and requires minimal underfloor luggage space and may not require a restroom. Another common use is for trips with longer distances such that passengers travel with luggage or sports equipment that requires underfloor storage. EPA contracted FEV to conduct analysis of the packaging feasibility of a FCEV powertrain on a coach bus to inform the final rule. FEV found that a FCEV powertrain would require the loss of 2–4 seats and 30 percent of the luggage volume. The capacity loss was driven by the space needed for the hydrogen tanks, fuel cell with BOP, and/or batteries. Our assessment is that the weight and volume required for packaging a BEV powertrain would be greater than the requirements for a FCEV powertrain, and therefore result in even greater capacity losses. After further consideration of suitability of projected technologies, including EPA re-analyzing the packaging space available for battery electric and fuel cell powertrains on coach buses, EPA now agrees with the commenters that feasibility demonstrations for new Phase 3 optional custom chassis standards for coach buses during the timeframe of the final rule should not include application of BEV or FCEV technology due to the packaging space required to meet commercial range requirements while also having adequate luggage space. Therefore, EPA’s optional custom chassis standards for Coach Buses will remain unchanged from the existing Phase 2 MY 2027+ CO₂ emission standards.¹⁷

¹⁴ EPA, Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3, Final rule, 80 Fed. Reg. 29440, 29483 (April 22, 2024).

¹⁵ *Id.* at 29532-33.

¹⁶ *Id.* at 29541.

¹⁷ *Id.* at 29568-69.

Thus, when a thorough assessment of the technology available in each model year to meet zero emission standards was actually completed, EPA found that motorcoaches could not meet this standard and did not require it.¹⁸ The nuanced challenges facing motorcoaches are clear from EPA's analysis and were addressed in its rulemaking. Through this process, EPA specifically found that BEV technology, including refueling needs, would not be available for coach buses until 2030, yet ACF sets standards for these same vehicles start in 2027.¹⁹ CARB's analysis (or more accurately its lack thereof) is directly in conflict with EPA's own analysis and thus CARB has not demonstrated that ACF meets this prong of the waiver test.

ii. The regulation does not give appropriate consideration to the cost of compliance within each period.

CAA section 202(a)(2) and (a)(3)(A)(i) require that, in adopting vehicle emission standards, EPA give appropriate consideration to the cost of compliance *within each period*. Because CARB does not identify the technology with which specific classes or categories of vehicles will comply with ACF, it is not possible for CARB to have undertaken an analysis of the actual cost of compliance during each period that ACF will apply. In fact, the various compliance options (Model Year Schedule and ZEV Milestone Option) and the multiple exemptions from rule applicability (ZEV unavailability, daily mileage usage, infrastructure construction delay, and vehicle delivery delay) make it impossible to assess the cost of compliance within each period.

The Department of Finance noted this uncertainty in its comments on the Standard Regulatory Impact Assessment ("SRIA")²⁰ that accompanied ACF.²¹ The Department of Finance noted that the SRIA assumes the purchase requirements of ACF will complement the sales requirements in the ACT regulation, but that differences in timing between ACF and ACT may hinder compliance of fleets that utilize heavier vehicle classes and asks that the SRIA include a sensitivity analysis to analyze this issue.²² In addition, the SRIA looks not at the cost of compliance within each period based on determined methods of compliance, but at the macroeconomic costs of ACF across the state compared to baseline operations.²³

Nor does the SRIA consider the economic costs of ACF across the U.S., due to the need for charging infrastructure for vehicles that are part of a California fleet, but which will travel far beyond California. A recent report by the Clean Freight Coalition forecasts nearly \$1 trillion in infrastructure investment alone for buildout for the electrification of medium- and heavy-duty commercial vehicles, including upwards of \$620 billion in charging infrastructure and \$370

¹⁸ *Id.* at 29562 (projecting technology will not be available for coach buses until 2030), 29567 (projecting 0% zero emission coach buses in the model years 2027-2032 technology packages for the modeled potential compliance pathway).

¹⁹ ACF § 2015.2(a).

²⁰ CARB, Original Standard Regulatory Impact Assessment Submitted to Department of Finance, Aug. 30, 2022, [Appendix C-1 Cover Page \(ca.gov\)](#).

²¹ Appendix C-2: Department of Finance Comment Letter, dated June 17, 2022, [Finance Comments \(ca.gov\)](#).

²² *Id.* at 1-2.

²³ ISOR, pp. 157-58.

billion in utility upgrades to meet the demand from Class 3-8 trucks.²⁴ This does not include the cost of purchasing ZEVs themselves (which is significant, especially for an industry such as the bus industry with many small family businesses), but does include the cost for charging infrastructure, power supply upgrades, electricity distribution and transmission, and other grid investments, all of which are necessary for ACF.²⁵ The \$370 billion for utility upgrades is particularly concerning, considering that utilities cumulatively invested roughly \$450 billion across the U.S. *for all distribution investment over the last 15 years.*²⁶ Thus, the utility costs only for medium- and heavy-duty charging represent 82 percent of what was spent on all distribution grid investments over the past 15 years.²⁷

CARB also identified numerous cost-barriers to ACF implementation, including high vehicle upfront costs and the real concern that ZEVs will not be able to replace existing combustion-powered vehicles on a one-to-one basis due to payload, mileage, or other issues. ISOR, pp. 200 (stating that “higher upfront cost of ZEVs can place a barrier in vehicle purchasing patterns” and that ZEVs can meet *most* daily needs on a one-to-one basis provided the ZEV is placed in applications where it is suitable).

Because CARB’s SRIA ignores and does not take into account these economic costs, the analysis is not sufficient to meet the demands of section 202(a).

iii. The ACF regulation does not meet the lead time requirement.

CAA section 202(a)(3)(C) provides, “Any standard promulgated or revised under this paragraph and *applicable to classes or categories of heavy-duty vehicles or engines* shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated” (emphasis added). These Congressionally mandated lead time and stability periods were created in order to allow manufacturers to make the capital investments necessary to respond to new regulations. Congress determined that these lead time and stability provisions were essential to successful implementation of the CAA’s technology-forcing objectives.

As described above, in the rulemaking for EPA’s GHG Phase 3 standards, EPA determined that zero emission coach buses were not technologically feasible until at least 2030. Despite evidence of the necessity for more lead time to prepare for this technology to be available, CARB has adopted a regulation requiring compliance by 2027, with no justification of technological availability.

Even if EPA chooses to interpret this prong of the waiver analysis to require only a determination of technological feasibility, this feasibility analysis must include an assessment of

²⁴ Clean Freight Coalition, *Forecasting a Realistic Electricity Infrastructure Buildout for Medium- and Heavy-Duty Battery Electric Vehicles*, dated March 19, 2024, prepared by Roland Berger, p. 4, [RB Study Report_final\[111225\].pdf \(cleanfreightcoalition.org\)](#).

²⁵ *Id.* at 13-16.

²⁶ *Id.* at 15.

²⁷ *Id.*

interactions between technologies that would affect feasibility.²⁸ As recognized by EPA in the GHG Phase 3 rulemaking, the relevant interaction here is between the technologies available for ZEVs and the charging infrastructure sufficient to enable those vehicles to actually be used for fleet operations.²⁹ The availability of ZEVs is not the end of the technological feasibility discussion but the beginning. CARB must also demonstrate that the infrastructure necessary to support these vehicles, including both depot and public charging (for light-, medium-, and heavy-duty vehicles), substation and transmission line upgrades, and sufficient power to meet the demands of an all-electric California fleet, also exist. The lead time provisions included in the CAA in order to provide manufacturers with time to respond to new regulations are equally, if not more, important for purchasers and end-users of vehicles, especially in light of the infrastructure challenges currently facing California and the U.S.

California currently has approximately 152,000 public and shared EV charging stations (overwhelmingly for light-duty vehicles), including 14,700 direct current fast chargers (15-350 kW)³⁰ (not the high speed en route chargers needed for medium- and heavy-duty fleets). CARB's ISOR states that 157,000 medium- and heavy-duty electric truck chargers are necessary by 2030 and 258,000 chargers by 2037.³¹ This includes approximately 5,500 high speed (350-1,599 kW) en-route chargers by 2030 and 8,500 high speed en-route chargers by 2037.³²

The report by the Clean Freight Coalition also found that, even assuming a scenario where battery improvements allow for longer usable ranges, significant numbers of chargers will be necessary. Under this "improved technology scenario", approximately 120,000 level 3 (up to 350 kW), 46,000 500 kW, and 12,000 1 MW on route chargers would be necessary to serve medium- and heavy-duty vehicles.³³ This does not include the over 6 million on-site chargers needed for full electrification. Meanwhile, only 178,517 level 2 and level 3 chargers were installed *across the entire U.S.* in 2023 for both public and private use. The report thus determines that the build out of "on-site charging just for commercial vehicle electrification would take over 35 years to construct at the current pace."³⁴ In addition to chargers, many sites will need significant power infrastructure upgrades in order to support charging infrastructure.³⁵

²⁸ EPA, 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, Notice of decision, 88 Fed. Reg. 20688, 20706 (April 6, 2023).

²⁹ See, e.g., EPA, Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3, Final rule, 80 Fed. Reg. 29440, 29546 (April 22, 2024) (discussing fact that coach buses will utilize public charging).

³⁰ California Energy Commission ("CEC") EV Charger Dashboard, [Electric Vehicle Chargers in California](#).

³¹ ISOR, pp. 72, 140.

³² CEC, Assembly Bill 2127 Electric Vehicle Charging Infrastructure Assessment, 2021, <https://efiling.energy.ca.gov/getdocument.aspx?tn=238853>.

³³ Clean Freight Coalition, Forecasting a Realistic Electricity Infrastructure Buildout for Medium- and Heavy-Duty Battery Electric Vehicles, dated March 19, 2024, prepared by Roland Berger, p. 12, [RB Study Report_final\[111225\].pdf \(cleanfreightcoalition.org\)](#). Note that 500 kW and 1 MW chargers are not widely deployed yet and there is significant uncertainty whether these chargers will even be available ahead of mandated timelines for the transition to zero emission vehicles. See *id.*

³⁴ *Id.* citing U.S. Department of Energy's Alternative Fuels Data Center, <https://afdc.energy.gov/stations/#/find/nearest?country=US>.

³⁵ *Id.*

CARB itself understands that ACF is technologically infeasible unless sufficient charging infrastructure and power supply is available. By creating the ZEV Infrastructure Delay Extension, which includes both delay from the ability of a utility to provide electricity to a site and construction delays from installation charging infrastructure, CARB recognizes that the technological feasibility of ZEVs is only step one.³⁶

Despite recognizing that ACF is not feasible without massive infrastructure investments across the state and nation, CARB does not explain how this infrastructure will be developed in order to make compliance possible. Instead, CARB relies on general future assumptions that provide few details and no explanation. See, e.g., ISOR, p. 53 (“Long-haul applications are expected to be served through a mixture of depot charging and high-speed public ZEV infrastructure (charging and hydrogen fueling), both of which are expected to become commonplace over time”); ISOR p. 73 (describing extreme high-powered charging system under development “with the promise” of reducing charging time). There is no support in any of CARB’s rulemaking documents or waiver request documents for the belief that the thousands of publicly accessible charging stations in California, let alone the U.S., necessary to comply with ACF will exist in time for regulated entities to comply with ACF. CARB has thus failed to provide a reasoned explanation of how ACF is technologically feasible.

Setting aside whether a specific lead time is mandated for regulations granted a waiver under CAA section 209, CARB’s decision to adopt a rule with *3 months* of lead time, from effective date to first compliance deadline, is unprecedented.³⁷ Even when much longer lead times have been provided, courts have looked closely at whether regulated entities can comply with the applicable standards.³⁸ By providing such a short ramp up to compliance deadlines, despite knowing it needed a waiver from EPA before it could enforce ACF³⁹, CARB forced its regulation through and left fleet operators with no alternative but to create a comprehensive compliance strategy with multi-million dollar investments over decades in order to comply with a regulation that has not yet been granted a waiver and is not yet enforceable, or fail to prepare a plan and face illegal retroactive enforcement by CARB once a waiver is granted.⁴⁰ This is not the waiver process anticipated by the CAA.

³⁶ ACF § 2015.3(c).

³⁷ See, e.g., EPA, 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; Notice, 74 Fed. Reg. 32744, 32768 (July 8, 2009); EPA, 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. 20688, 20704 (April 6, 2023).

³⁸ *International Harvester v. Ruckelshaus*, 478 F.2d 615, 626 (D.C. Cir, 1973) (relatively short 2 year lead time for model year standards was given a hard look by EPA).

³⁹ See Letter from Steve Cliff, CARB Executive Officer to Michael Regan, EPA Administrator, Re: Request for Waiver and Authorization Action Pursuant to Clean Air Act Sections 209(b) and 209(e) for California’s Advanced Clean Fleets Regulation, dated Nov. 15, 2023.

⁴⁰ See *Central Valley Chrysler-Jeep, Inc. et al. v. Goldstene*, 563 F.Supp.2d 1158, 1168 (E.D. Cal. 2008) (stating in the context of a late granted waiver due to litigation that might come into effect immediately: “it is not the court’s role to assure that [automobile manufacturers] will have sufficient time to actually implement the required changes if and when the waiver of federal preemption is granted [by EPA]); see *id.*

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ABA appreciates the opportunity to submit comments on this very important matter. We appreciate the continued working relationship with the EPA in working to improve the effectiveness of sustainable mass passenger transportation by motorcoach. In conclusion, in order for CARB to receive a waiver for ACF, its standards must be consistent with section 202(a) of the CAA. Since CARB has not established that these criteria have been met, ACF is ineligible for a waiver of federal preemption under CAA section 209(b)(1)(C). **This waiver request must be rejected.** If you have any questions regarding these comments or require additional information, please contact ABA's Senior Vice President for Government Affairs and Policy, Suzanne Rohde at (202) 218-7224 or srohde@buses.org.

Respectfully submitted,

American Bus Association