BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	R24-17
PROPOSED CLEAN CAR AND TRUCK STANDARDS: PROPOSED 35 ILL. ADM. CODE 242	)	(Rulemaking – Air)

NOTICE

TO: Don Brown
Clerk
Illinois Pollution Control Board
60 E. Van Buren St., Suite 630
Chicago, IL 60605
don.brown@illinois.gov

ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the MOTION FOR WAIVER OF REQUIREMENTS and POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Gina Roccaforte
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: April 28, 2025

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P. O. Box 19276
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PROPOSED CLEAN CAR AND TRUCK STANDARDS: PROPOSED 35 ILL. ADM. CODE 242	)	(Rulemaking – Air)

MOTION FOR WAIVER OF REQUIREMENTS

NOW COMES the Illinois Environmental Protection Agency ("Agency"), by one of its attorneys, and pursuant to 35 Ill. Adm. Code 101.500, hereby moves the Illinois Pollution Control Board ("Board") to waive certain requirements, namely that the Post-Hearing Comments of the Illinois Environmental Protection Agency regarding the December 2-3, 2024, and March 10-11, 2025, hearings not exceed 50 pages in length as otherwise provided for under 35 Ill. Adm. Code 101.302(k).[1] In support of its Motion, the Agency states as follows:

1. On June 27, 2024, the Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, Respiratory Health Association, Chicago Environmental Justice Network, and Center for Neighborhood Technology filed the rulemaking proposal with the Board to adopt a new Part 242, Proposed Clean Car and Truck Standards.

2. On July 11, 2024, the Board found that the proposal meets the requirements of the Board's procedural rules and accepted the proposal for hearing. The Board held hearings on December 2-3, 2024, and March 10-11, 2025, by videoconference between Chicago and Springfield.

3. At the conclusion of the second hearing, a schedule was set regarding the deadlines for the filing of public comments in this proceeding; the deadline for all public comments on the proposal is April 28, 2025, and the deadline for responsive public comments to

[1] This request is made to the extent that the Board deems these post-hearing comments a "brief" as that term is used in Section 101.302(k) and defined in Section 101.202.

the post-hearing public comments is May 12, 2025.

4. While the Agency's Post-Hearing Comments are 64 pages in length, this is reasonable given the amount of information that has been presented by the rule proponents and other participants in this proceeding, and given the significance and complexity of the proposed rulemaking. The Agency diligently attempted to minimize the length of the Agency's Post-Hearing Comments and has not responded to trivial or non-substantive matters. Despite these efforts, the Agency has found it unachievable to set forth the numerous issues that must be addressed in no more than 50 pages.

5. Contemporaneous with this Motion, the Agency is submitting the Post-Hearing Comments of the Illinois Environmental Protection Agency to the Board for filing, which filing is in excess of 50 pages in length.

WHEREFORE, for the reasons set forth above, the Agency respectfully moves that the Board waive the requirement outlined above and allow the Agency to file the Post-Hearing Comments of the Illinois Environmental Protection Agency in excess of 50 pages.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Gina Roccaforte
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: April 28, 2025

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PROPOSED CLEAN CAR AND TRUCK STANDARDS: PROPOSED 35 ILL. ADM. CODE 242	)	(Rulemaking – Air)

POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES the Illinois Environmental Protection Agency ("Agency" or "Illinois EPA"), by its attorneys, and respectfully submits its post-hearing comments in the above rulemaking proceeding regarding the December 2-3, 2024, and March 10-11, 2025, hearings. While the Agency strongly supports the adoption of electric vehicles ("EVs") in Illinois through incentive programs that encourage the purchase of EVs and increase access to charging infrastructure necessary to support EV use across the State, the Agency does not support the Illinois Pollution Control Board's ("Board") adoption of California standards that would illegalize the sale of non-zero-emission vehicles ("non-ZEVs")—even limiting the sale of plug-in hybrid electric vehicles ("PHEVs"). Such a significant shift in State policy should be made by the Illinois General Assembly, which is better situated to assess and address the many issues tied to adoption of California's clean car and truck standards. Moreover, as set forth in more detail below, the proposed rules exceed the Board's authority under Section 10 of the Environmental Protection Act ("Act"), as there is no basis in the rulemaking record for the Board to conclude that vehicles like PHEVs constitute "air-pollution hazard[s]," the sale of which should be limited. 415 ILCS 5/10(A)(d). The Agency recommends that the Board not move the rule proposal to First Notice at this time.

I. Assessing California Standards Requires a Whole-of-Government Approach, Necessitating a Top-Down Strategy

The rule proposal currently before the Board seeks to adopt California's standards, which are incorporated by reference, that would impose three motor vehicle emissions regulations applicable to light-, medium- and heavy-duty vehicles in Illinois: the Advanced Clean Cars II ("ACC II") regulation, which includes a low-emission vehicle ("LEV") component and a zero-emission vehicle ("ZEV") component[1]; the Advanced Clean Trucks ("ACT") regulation; and the Heavy-Duty Low NOx ("Low NOx") regulation. The LEV regulation establishes increasingly more stringent exhaust and evaporative emission standards for light- and medium-duty internal combustion engine vehicles, and the ZEV regulation requires manufacturers of passenger cars and light-duty trucks to produce and deliver for sale in Illinois an increasing percentage of ZEVs each year beginning with 59% ZEV sales in 2029 and concluding with 100% ZEV sales in 2035 and thereafter. Proposed 35 Ill. Adm. Code 242, Subparts B and C.[2] Like the ACC II, the ACT regulation requires vehicle manufacturers to produce and deliver for sale in Illinois specified quantities of ZEVs and near-zero emission vehicles in Classes 2b-8 based on increasingly higher percentages of annual sales of on-road medium- and heavy-duty vehicles. Proposed 35 Ill. Adm. Code 242, Subpart E. The Low NOx regulation includes NOx and particulate matter exhaust emission standards for heavy-duty diesel-cycle and Otto-cycle engines used in certain heavy-duty vehicles. Proposed 35 Ill. Adm. Code 242, Subpart D.

[1] The ACC II regulation defines ZEVs as "passenger cars and light-duty trucks that produce zero exhaust emissions of any criteria pollutant (or precursor pollutant) or greenhouse gas, excluding emissions from air conditioning systems, under any possible operational modes or conditions." 13 CCR 1962.4(b). This would include battery electric vehicles ("BEVs") and hydrogen fuel cell vehicles, but excludes PHEVs.

[2] For comparison, during 2024, the EV market share for new vehicle sales in Illinois was 7.76%, down from 7.80% in 2023. Alliance for Automotive Innovation, *Get Connected: Electric Vehicle Quarterly Report*, Fourth Quarter 2023 at 6 and Fourth Quarter 2024 at 9, https://www.autosinnovate.org/GetConnected (last visited March 31, 2025).

The ZEV standards rely on a credit system under which different vehicles are accorded varying numbers of credits. Manufacturers must establish an account in the California ZEV credit system for banking credits earned in Illinois. Manufacturers are required to make up deficits in the number of vehicles they supply by submitting credits to the credit bank and may purchase credits to meet their obligations.

Under ACC II, PHEVs that meet specified range requirements can be credited as ZEVs but can account for only 20 percent of the required ZEV sales in any given year. *See*, R24-17, *Rule Proponents' Responses to Pre-Filed Questions Not Addressed to Specific Witnesses*, November 18, 2024, at 59 (Hr. 1, Exh. 14, at 59); California Code of Regulations ("CCR"), Title 13, Section 1962.4(e)(1). Under ACT, PHEVs are classified as "near-zero emission vehicles" and may account for only 50 percent of credits required toward rule compliance in any given year. 13 CCR 1963.3(d). In both cases, then, the California rules limit the sales of non-ZEVs, including even PHEVs. As Rule Proponents' witness conceded at hearing, "If you would like to classify that as a ban [on vehicles that do not qualify as ZEVs], I guess I can't necessarily argue with that." (Transcript ("Tr.") December 2, 2024, Hearing, 87:17-18.)

In addition to California's clean car and truck standards described above, the proposed rule also includes a prohibition section that provides, "Subject to an applicable exemption, starting with the 2029 model year and for each model year thereafter, *it is unlawful for any person to sell or register, offer for sale or lease, deliver, import, purchase, or lease a new motor vehicle unless that new motor vehicle has been certified to California emission standards and meets all other applicable requirements of California Code of Regulations*, Title 13, Sections 1956.8, 1961.3, 1961.4, 1962.3 to 1962.8, 1963 to 1963.5, 1965, 1968.2, 1969, 1971.1, 1976, 1978, and 2065." (emphasis added) Proposed 35 Ill. Adm. Code 242.104. "Person" is defined

as "any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock companies, and shall also include, without limitation, all political subdivisions of any states, and any agencies or instrumentalities thereof." Proposed 35 Ill. Adm. Code 242.102. In addition, "A person who violates any provision of this Part shall be subject to civil penalties in accordance with Section 42 of the Environmental Protection Act (415 ILCS 5/42)." Proposed 35 Ill. Adm. Code 242.106. As written, these provisions appear to subject not only vehicle manufacturers but also individuals and non-manufacturer entities to enforcement for violations of the prohibitions under the proposed rule.

The Rule Proponents request that the Board adopt the above standards unilaterally and without input from numerous entities that would necessarily need to be involved in implementing the standards or that would be directly impacted by such implementation.[3] The Agency does not agree with this approach, but rather agrees with statements made during this rulemaking proceeding that a whole-of-government approach is preferable and in fact necessary to build and support a robust ZEV market in Illinois. *See*, R24-17, *Pre-Filed Answers of Steven Douglas on behalf of the Alliance for Automotive Innovation*, March 3, 2025, at 23 (Hr. 2, Exh. 7, at 23). To date, the approach that has been chosen and implemented in the State is very different than the prohibitory California standards currently under consideration by the Board. The State's EV policy clearly supports the adoption of EVs across the State, but through incentive programs that encourage the purchase of EVs and increase access to EV charging infrastructure.

[3] In contrast, for substantive rulemakings, the Agency generally conducts outreach to all potentially impacted sources and other interested groups, such as environmental groups and industry groups and any other persons that have indicated a desire to be notified of such matters.

A. Current Illinois Laws Promote—But Do Not Mandate—EV Adoption

The Climate and Equitable Jobs Act ("CEJA"), Pub. Act 102-0662 (eff. September 15, 2021), established several programs to incentivize EV adoption. First, CEJA amended the Electric Vehicle Act, 20 ILCS 627/1 *et seq*., to substantially offset the installation costs of EV charging infrastructure. The Illinois General Assembly originally enacted the Electric Vehicle Act in 2011, finding that "the adoption and use of electric vehicles would benefit the State of Illinois by (i) improving the health and environmental quality of the residents of Illinois through reduced pollution, (ii) reducing the operating costs of vehicle transportation, and (iii) shifting the demand for imported petroleum to locally produced electricity." 20 ILCS 627/5. The Electric Vehicle Act in Section 10 defines "electric vehicle" to encompass both "a battery-powered electric vehicle operated solely by electricity" (i.e., a BEV) and "a plug-in hybrid electric vehicle that operates on electricity and gasoline and has a battery that can be recharged from an external source" (i.e., a PHEV). 20 ILCS 627/10.

CEJA added new Sections 45 and 55 to the Electric Vehicle Act, setting out a goal of having 1,000,000 BEVs in the State by 2030. 20 ILCS 627/45(a)(1). To date, the Agency has issued grants totaling approximately $60 million to public and private organizations to install and maintain charging stations and will continue to issue grants as set forth in the statute. For example, BP Products North America, Inc., was awarded over $8 million to install charging stations at gas stations in approximately 22 cities in the Chicago metropolitan area; Universal EV LLC was awarded almost $3 million for charging station installations near hotels and retail locations in the Chicagoland area, Peoria, Decatur, and Lincoln; and EV Energy Group was awarded over $3 million for installations in the Chicagoland area, Springfield, and Champaign, in each case with substantial matching funding from the private entity. Several municipalities,

EV manufacturers, and car dealerships have also been awarded grants, and a full listing of recent awards can be found on the Agency's *Driving a Cleaner Illinois* webpage at https://epa.illinois.gov/topics/air-quality/driving-a-cleaner-illinois.html (last visited April 24, 2025).

In addition, CEJA required that certain utilities, Commonwealth Edison Company and Ameren Illinois, submit to the Illinois Commerce Commission ("ICC") for approval Beneficial Electrification Programs containing transportation electrification investment and incentives to be implemented by the utilities. 20 ILCS 627/45 and 55. The ICC recently approved Ameren Illinois's three-year revised proposed Beneficial Electrification Plan 2 budget at $86.7 million and Commonwealth Edison Company's three-year revised proposed Beneficial Electrification Plan 2 average annual budget of $58.2 million. *Ameren Ill. Co.*, Docket Nos. 24-0494/24-0578 (Consol.), Order (March 27, 2025), https://www.icc.illinois.gov/docket/P2024-0494/documents/363210/files/636045.pdf, and *Commonwealth Edison Co.*, Docket Nos. 24-0484/24-0577 (Consol.), Order (March 27, 2025), https://icc.illinois.gov/docket/P2024-0484/documents/363211/files/636048.pdf. Moreover, under the Electric Vehicle Rebate Act, 415 ILCS 120/1 *et seq.*, the Agency has issued and continues to issue rebates for the purchase of EVs, prioritizing applications from low-income purchasers. To date, the Agency has issued rebates totaling approximately $38.1 million to approximately 9,530 rebate applicants.

Along with the above, the Agency has administered its *Driving a Cleaner Illinois* grant program, developed to distribute funding from a variety of sources, including CEJA, the Volkswagen Environmental Mitigation Trust, and the United States Environmental Protection Agency's ("USEPA") Diesel Emission Reduction Act ("DERA") Program, for various types of mobile source electrification projects. To date, the Agency has distributed and obligated

approximately $110.2 million in grants for electric school buses, electric transit buses, and public Level 3 charging sites. Last month, the Agency posted a notice of funding opportunity for up to $20 million for electric truck grants, with applications due in June 2025. There is also one DERA Program project currently underway funding approximately $750,000 for three electric refuse haulers (garbage trucks).[4]

Illinois government is also involved in incentive programs in addition to those specified above under CEJA. Under the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429 (November 15, 2021), the Illinois Department of Transportation ("IDOT") implements the United States Department of Transportation's ("USDOT") Federal Highway Administration ("FHWA") National Electric Vehicle Infrastructure ("NEVI") Formula Program that awarded $5 billion in funding to states over a five-year period (fiscal years 2022 through 2026), with Illinois being awarded over $148 million, to strategically deploy EV chargers and to establish an interconnected network to facilitate data collection, access, and reliability. *National Electric Vehicle Infrastructure Standards and Requirements*, 88 Fed. Reg. 12724 (February 28, 2023).

The State also secured funding from the USDOT's Charging and Fueling Infrastructure ("CFI") Grant Program. The Agency was awarded $100 million for heavy-duty transportation and freight charging stations located in areas that benefit disadvantaged communities, and the Metropolitan Mayors Caucus, a membership of the Chicago region's 275 cities, towns, and villages, was awarded over $14 million for community charging stations. https://www.fhwa.dot.gov/environment/cfi/grant_recipients/round_2/ (last visited April 14, 2025). In addition, the Illinois Finance Authority, in its role as the Illinois Climate Bank, was awarded $14.9 million from the CFI Grant Program to strategically deploy EV charging

[4] Proposed federal funding pauses and cuts may impact the Agency's ability to implement similar projects in the future. The Agency addresses potential impacts of recent federal actions later in these comments.

infrastructure and other fueling infrastructure projects in urban and rural communities in publicly accessible locations. https://www.il-fa.com/programs/cb/federal-funding (last visited April 14, 2025).

Under the Inflation Reduction Act of 2022, Pub. L. 117-169, 136 Stat. 1818 (August 16, 2022), the USEPA Climate Pollution Reduction Grant ("CPRG") program awarded funding for states to develop and implement climate action plans that aim to reduce greenhouse gas ("GHG") emissions. The State of Illinois has been awarded a grant that totals more than $430 million to implement its CPRG plan in five priority areas including the deployment of clean transportation and freight, with $115 million awarded for heavy-duty vehicle electrification. This program supports the Agency's goals to electrify freight movement across the State, while working in partnership with Illinois fleet operators to plan for and deploy zero-emission infrastructure and equipment. State of Illinois, Priority Climate Action Plan, Illinois Environmental Protection Agency, March 1, 2024. https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/climate/documents/Illinois%20Priority%20Climate%20Action%20Plan.pdf (last visited March 12, 2025). In addition, under USEPA's Clean Ports Program, the Agency was awarded more than $95 million to support its goals to electrify freight movement across Illinois, while working in partnership with public ports across the State to modernize their facilities and deploy zero-emission infrastructure. https://www.epa.gov/newsreleases/epa-announces-more-95-million-clean-ports-investments-illinois-environmental (last visited April 14, 2025).

The State's efforts as outlined above have been considerable and demonstrate a policy of supporting the adoption of EVs by reducing the barriers to EV ownership. They do not demonstrate a policy of compelling Illinois citizens to adopt ZEVs by mandating that a certain

percentage of new vehicles sold in State be ZEVs, which policy necessarily would limit the sale and availability of non-ZEVs in the State. Governor Pritzker has described the State's EV policy as using "carrots rather than sticks to move people in the right direction." Sloup, Tammie, *Pritzker opposes adoption of California's emission rules*, FarmWeekNow.Com, February 29, 2024, Updated March 7, 2024, https://www.farmweeknow.com/policy/state/pritzker-opposes-adoption-of-californias-emission-rules/article_f0345620-d71a-11ee-8310-8f5eb9a55192.html (last visited February 25, 2025). And, as has been discussed in this rulemaking, the Illinois General Assembly has declined to advance bills that would adopt the "stick" of California car and truck standards. R24-17, Order, November 7, 2024, at 7-8 (discussing failed legislation requiring adoption of California standards).

If adopted, the rule proposal would require action from and coordination among numerous entities, including the Illinois General Assembly, State agencies, and regional transmission organizations ("RTOs"), most of which are not under the jurisdiction of the Board and have not been involved in the Board's rulemaking process. The rule would have significant and far-reaching impact on the State and its citizens, including economic impact, which would need to be evaluated along with implementation and feasibility concerns. Consequently, as set forth in more detail below, the more appropriate venue to determine whether Illinois should continue on its incentive-driven pathway or change course to implement California's clean car and truck standards is the Illinois General Assembly. It is better situated to solicit input from impacted entities and, if adoption of clean car and truck standards is desired, to require action from those entities to implement the new standards while mitigating negative consequences such as potential revenue shortages. The Illinois General Assembly is also better situated to assess feasibility of compliance with the standards, the broad range of economic impacts expected from

adoption, and timing considerations given the current federal administration's recent and anticipated actions regarding California's clean car waivers and federal funding for EVs.[5]

B. The Illinois General Assembly is Best Situated to Solicit Input from All Impacted Parties and Require Implementation of California Standards

The Illinois General Assembly is the more appropriate venue to solicit input from the various entities that would be impacted by adoption of the California clean car and truck standards and to require implementation measures by such entities. Many different areas of State government would need to be involved in assessing and implementing the standards, including the Illinois General Assembly itself, the Office of the Illinois Secretary of State ("SOS"), ICC, Midcontinent Independent System Operator ("MISO"), and PJM Interconnection ("PJM"). Not only has outreach to these entities not been conducted in the Board's rulemaking proceeding (at least to the Agency's knowledge), but also the Agency questions whether the Board has the statutory authority to impose requirements on these entities that would be necessary to

[5] Several other states that have adopted clean car and truck standards did so via a top-down approach under which specific authority and/or requirements were established by statute, at minimum providing state agencies guidance regarding the state's desired policy direction. *See*, Connecticut, Conn. Gen. Stat. §22a-174g ("…the Commissioner of Energy and Environmental Protection shall adopt regulations…to implement the light duty motor vehicle emission standards of the state of California…", and "The Commissioner of Energy and Environmental Protection may adopt regulations…to implement the medium and heavy-duty motor vehicle standards of the state of California…) and Washington, Rev. Code Wash. §70A.30.010 ("Pursuant to the federal clean air act, the legislature adopts the California motor vehicle emission standards in Title 13 of the California Code of Regulations. The department of ecology shall adopt rules to implement the motor vehicle emission standards of the state of California, including the zero emission vehicle program…").

Other states have declined to adopt certain clean car and truck standards. For example, in late 2023, at the direction of the General Assembly, Connecticut proposed adoption of updated emissions standards for light-duty passenger vehicles (ACC II) and new emissions standards for medium and heavy-duty vehicles (ACT and Low NOx Regulation), which were subsequently withdrawn and not adopted. https://portal.ct.gov/deep/air/mobile-sources/ct-proposed-emissions-standards-for-cars-and-trucks and https://www.ctpublic.org/news/2023-11-27/ct-could-phase-out-new-gas-only-vehicles-by-2035-what-does-that-mean-for-the-state (last visited March 7, 2025). Concerns expressed by members of the Connecticut Regulation Review Committee included the cost of electric vehicles, the ability of the electric grid to meet the greater demand, the impact on agriculture in rural districts, as well as the state's readiness and the impact on lower-income, urban constituents. Other states have passed legislation specifically prohibiting adoption of clean car standards. Last year, the North Carolina General Assembly enacted a statutory provision prohibiting requirements for control of emissions from new motor vehicles. N.C. Gen. Stat. §143-215.107F.

successfully implement California standards while also minimizing negative ramifications on the State and its citizens.

The primary entity that would need to be involved should Illinois transition from incentive-based programs to California's clean car and truck sales mandates would be the Illinois General Assembly. In response to the Agency's questions at hearing regarding the anticipated effects on State revenues and local governments that receive funding from the State, (Tr. December 2, 2024, Hearing, 57:9-24, 58:1-7, 59:15-17, and 61:17-22, and the Board's request, *Id*. at 62:15-20, 62:24, and 63:1-2), the Rule Proponents submitted an analysis to the Board entitled "Impacts of Electric Vehicle Adoption and Revenue Policies on Illinois Highway Funding." R24-17, *Rule Proponents' Supplemental Response to Question #10 Posed During the December 2-3, 2024 Hearing before the Illinois Pollution Control Board*, Exhibit A, ERM Analysis, March 6, 2025 ("ERM Analysis"), (Hr. 2, Exh. 2, Exhibit A). According to the Rule Proponents, "ERM's analysis: (1) assesses Illinois' motor fuel tax with adoption of the Proposed Rules; (2) explains fundamental shortcomings and limitations of the IDOT study; and (3) summarizes a policy solution that, if adopted by the legislature, would modernize the current motor fuel tax, providing a comprehensive, sustainable framework for transportation infrastructure funding in Illinois." *Id*. at 2.

While the ERM Analysis includes assessments and explanations, of utmost importance is the summarization of "a policy solution, that *if adopted by the legislature*" would provide the framework to fund State transportation infrastructure should California standards be adopted and negatively impact State revenues. The Agency discusses the economic impact of the rulemaking proposal in more detail below, but even accepting the workability of Rule Proponents' proposed solution, it is contingent upon the Illinois General Assembly enacting legislation, which the

Board has no ability to compel. Moreover, it is the Illinois General Assembly, not the Board, that would need to reassess and reconsider whether the State's current financial support for EV adoption would be sufficient to support compliance with California standards—particularly in light of potential issues with federal funding that the State has relied upon.

The Illinois General Assembly also should direct any adoption of California standards because such a policy change would directly impact millions of constituents across the State. As of April 11, 2025, there were 7,087,092 registered passenger vehicles in the State. SOS, *Active Registrations*, https://www.ilsos.gov/departments/vehicles/statistics/activereg/home.html (last visited April 21, 2025). Of those over 7 million vehicles, 135,482 are EVs. SOS, *Electric Vehicle Counts by County*, https://www.ilsos.gov/departments/vehicles/statistics/electric/home.html (last visited April 21, 2025).

The Agency cannot recall any prior rulemaking proceeding in which the Board was asked to so significantly limit consumer choice by banning the sale of a product (non-ZEV vehicles) currently owned and relied upon by millions of Illinois residents and businesses. Moreover, the adoption of California standards would, by the Rule Proponents' own estimation, require a significant outlay of funds by private citizens—an estimated $443 million per year (in 2022 dollars) between 2027 and 2050 to purchase and install home-based charging infrastructure. R24-17, *Rule Proponents' Initial Filing*, June 27, 2024, at Exhibit 2, page 122 (Hr. 1, Exh. 1, at Exhibit 2, page 122) (ERM analysis concluding that, "[u]nder the ACC II Flex and ACC II Flex + Clean Grid scenarios, Illinois's LDV owners will have to invest an average of $443 million per year (2022 dollars) between 2027 and 2050 to purchase and install home-based charging infrastructure"). Simply put, the Illinois General Assembly is better suited than the Board to

answer the central factual question posed by the proposal: will Illinois residents and businesses be willing to adopt BEVs in the massively expanded numbers necessary for vehicle manufacturers to comply with California standards, beginning with model year 2029? That is not a technical question so much as it is a requirement to gauge public sentiment—a task better suited for the elected representatives of the Illinois General Assembly than for the Board.

At a basic level, Rule Proponents are asking the Board in this proceeding to essentially switch its role with that of the Illinois General Assembly. Typically, the Illinois General Assembly and the Governor set policy, particularly policies with broad and far-reaching impacts like those at issue here, and then require or direct that State agencies take certain actions in furtherance of it. This rule proposal, on the other hand, would entail the Board unilaterally setting policy (a policy that runs contrary to that currently implemented in Illinois) that the Illinois General Assembly would be expected to address, react to, and implement. In fact, the Board would be setting a policy and establishing requirements that the Illinois General Assembly previously considered but did not choose to adopt. Along these same lines, Rule Proponents are not asking the Board to adopt a rule in its typical sphere of authority, such as establishing emission limits for specific types of stationary air pollution sources, but rather are asking the Board to adopt a rule that directly restricts the individual choices of millions of Illinois residents. The broad impact of the rule proposal lends itself more to the Illinois General Assembly's traditional remit, not the Board's.

Along with the Illinois General Assembly, adopting the rule proposal here would impact SOS. The rule proposal prohibits registration of certain new vehicles unless specific exemptions are met.[6] The Rule Proponents acknowledge that the exemptions in Section 242.105(c), (e), (f),

[6] Exemptions include (a) a used motor vehicle, (b) a new motor vehicle sold to be wrecked or dismantled, (c) a new motor vehicle sold for registration out of state, (d) a new motor vehicle sold exclusively for off-highway use, (e) a

(g), (h), (i), (j), and (l) "do not explicitly appear in the California regulations incorporated by reference, although they *may appear* elsewhere in California regulations or statute" and states that the "Board should adopt these exemptions, which are based on exemptions adopted by other Section 177 states." R24-17, *Rule Proponents' Post-Hearing Responses to Questions Posed During the December 2-3, 2024 Hearing Before the Illinois Pollution Control Board*, January 13, 2025, at 5, (Hr. 2, Exh. 1, at 5) (emphasis added). Rule Proponents confirmed their expectation that the SOS will implement these provisions—that SOS will deny vehicle registrations for noncompliant vehicles and will assess whether the exemptions are applicable. Hr. 1, Exh. 14, at 32-34, and R24-17, *Rule Proponents' Supplemental Response to Question #10 Posed During the December 2-3, 2024 Hearing before the Illinois Pollution Control Board*, March 6, 2025, at 2-6, (Hr. 2, Exh. 2, at 2-6).

It is unclear to the Agency, however, whether SOS is obligated or authorized to implement the proposed rule absent amendments to the Illinois Vehicle Code and its implementing regulations. In relation to questions regarding the registration of vehicles with the SOS, the Rule Proponents indicate, "The proposed rule simply adds one item to the set of items that must be supplied to the Secretary of State in order to register a vehicle." Hr. 1, Exh. 14, at 31, and Hr. 2, Exh. 1, at 11. The Rule Proponents also state, "No additional vehicle registration

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new motor vehicle acquired by a resident of this State for the purpose of replacing a vehicle registered to such resident which was damaged or become inoperative beyond reasonable repair or was stolen while out of state, (f) a new motor vehicle transferred by inheritance, (g) a new motor vehicle transferred by court decree, (h) a new motor vehicle sold after the effective date of this regulation if the vehicle was registered in this State before such effective date, (i) a new motor vehicle having a certificate of conformity issued pursuant to the federal Clean Air Act (42 USC Section 7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this State and who upon registration of the vehicle in this State provides satisfactory evidence to the Illinois Secretary of State or its assigned designee of the previous residence and registration, (j) a new motor vehicle certified to standards adopted under authority granted by the federal Clean Air Act (42 USC Section 7521) and in possession of a rental agency in Illinois and that is next rented with a destination outside of the state, (k) a new diesel-fueled transit bus sold to a transit agency, (l) an authorized emergency vehicle, and (m) a military tactical vehicle. Proposed 35 Ill. Adm. Code 242.105.

documentation should be required from individual vehicle purchasers to implement the Proposed Rules. The required documentation already generally appears on the Manufacturer's Certificate of Origin that manufacturers or dealers already provide to the Secretary of State for each vehicle when it is sold. Under the Proposed Rules, the Manufacturer's Certificate of Origin (also referred to as a 'Manufacturer's Statement of Origin') or other acceptable documentation would simply need to indicate that the vehicle is certified to the applicable California emission standards, rather than only to federal standards, as is currently required." *Id*. at 12.

Even if existing documentation would indeed contain the necessary information, SOS would still need to be obligated and authorized to "check" that such information is present and deny registration if appropriate. SOS would also potentially need to assess whether an exemption is applicable, excusing the driver from compliance with the prohibitions in Section 242.104. Rule Proponents confirmed, "The Secretary of State could consider whether those promulgated exceptions apply if it were to receive a registration application for a vehicle that was not certified as compliant with the relevant California standards." *Id*. at 16. Whether and how SOS would go about collecting information to demonstrate an exemption is applicable in a certain scenario is unclear, though, as is the specific information that would be required from the driver.

Rule Proponents state, "The Secretary of State is already required by statute to deny registration if an applicant does not provide sufficient information required to demonstrate compliance with the state's laws." *Id.* at 12-13. The Rule Proponents attempt to cite[7] to Section 3-408 of the Illinois Vehicle Code, 625 ILCS 5/3-408, that governs the grounds for refusing a registration or certificate of title. Section 3-408 provides, in part, "The Secretary of State shall

[7] The Rule Proponents incorrectly cite to 635 ILCS 5/3-408(a)(1) instead of 625 ILCS 5/3-408(1). Hr. 2, Exh. 1, at 13, footnote 28.

refuse registration or any transfer of registration upon any of the following grounds: 1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the Secretary of State or that the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle *under Chapter 3*." 625 ILCS 5/3-408 (emphasis added). The reference to Chapter 3 is Chapter 3, Certificates of Title and Registration of Vehicles, of the Illinois Vehicle Code, not a Board regulation or "state law" in general (to the extent regulations are even considered "state law;" a regulation having the force and effect of law does not mean it *is* a state law).[8]

Moreover, both Chapter 3 of the Illinois Vehicle Code and SOS's regulations establish documentation requirements that a driver must provide if the driver is seeking to register a vehicle not manufactured in compliance with *federal* safety and emission standards; they do not appear to currently require similar documentation for vehicles not manufactured in compliance with *California*'s clean car and truck standards.[9] The Illinois Vehicle Code's specific reference to requiring evidence of compliance with federal emission standards is facially inconsistent with any direction from Board regulations to instead consider compliance with California emission standards.

Based on the above, it is not apparent to the Illinois EPA that SOS is legally obligated—or even authorized—to implement Board regulations when vehicle owners attempt to register their vehicles, absent statutory and regulatory amendments. It is also not apparent that under the

[8] The Agency is not sure where the Rule Proponents got the term "state's laws", but the Agency searched Chapter 3 of the Illinois Vehicle Code for this term and did not locate it in the context of registration requirements.
[9] The Illinois Vehicle Code states, in part, "If the application [for a certificate of title] refers to a vehicle not manufactured in accordance with federal safety and emission standards, the application must be accompanied by all documents required by federal governmental agencies to meet their standards before a vehicle is allowed to be issued title and registration." 625 ILCS 5/3-104(g). In addition, the Secretary of State's regulations governing certificates of title and registration of vehicles currently include provisions for Documents Required to Title and Register Imported Vehicles Not Manufactured in Conformity with Federal Emission or Safety Standards, 92 Ill. Adm. Code 1010.140.

Board's regulations SOS would receive the information necessary to determine whether an exemption exists such that it could make an informed determination. While Rule Proponents indicate that SOS has been notified of the rulemaking, they did not indicate that any discussions have taken place with SOS (Tr. December 3, 2024, Hearing, 219:23-24 and 220:1-7, and Hr. 2, Exh. 1, at 15), and SOS has not to date shared in this rulemaking its position about the proposal.

Next, the ICC, MISO, and PJM would be impacted by adoption of clean car and truck standards in Illinois. The ICC oversees the provision of adequate, reliable, efficient, and safe utility services at the least possible cost to Illinois consumers. The ICC regulates investor-owned public utilities including electric and natural gas distribution companies and water and sewer utilities. CEJA obligated the ICC to implement new programs, initiatives, and directives to further the State's goals of transitioning to clean energy. In addition, the ICC is involved in general economic policy and analysis regarding state, regional, and national energy issues and monitors the activities of MISO and PJM, the two RTOs that include Illinois, and the Federal Energy Regulatory Commission, which is responsible for regulating the transmission and sale of wholesale energy throughout the United States.

MISO and PJM are RTOs that ensure power flows across states and facilitate the buying and selling of electricity in their regions. RTOs coordinate, control, and monitor the electric grid. While having exclusive responsibility for grid operations, short-term reliability, and transmission service within their regions, the RTOs also partner with stakeholders in planning the grid of the future.

The shift to electric transportation that Rule Proponents seek to hasten through the adoption of California standards leads to a new set of challenges and considerations for the electric power grid, as there will be increased demand for electrical power, and the electricity

grid must be able to handle the additional load. This means having sufficient generation to meet projected electric demand. In addition to the grid operators planning, operating, and protecting the grid, the electric utilities may have to upgrade the infrastructure, such as transformers, substations, and distribution lines, to handle the higher loads. The utilities must anticipate not only the location but the quantity of charging infrastructure and invest accordingly to ensure the grid is able to meet the demand without sacrificing reliability, especially considering the intermittent nature of renewable energy, such as wind and solar, that pose challenges for grid stability.

Despite the above, the Rule Proponents have not consulted with MISO or PJM regarding grid reliability impacts. Hr. 1, Exh. 14, at 21. Rule Proponents instead claim that there will be no grid reliability impacts resulting from the rules until they go into effect in model year 2029, which should give sufficient time for the ICC to take EV growth into its transmission and distribution grid planning processes and for utilities to make the necessary grid investments. *Id.* Just as with the Illinois General Assembly addressing funding and SOS addressing vehicle registrations, Rule Proponents ask the Board to simply assume that the ICC, RTOs, and utilities will have time to sufficiently react to the impacts caused if the Board adopts California standards. The Agency does not agree that doing so is advisable. Other entities with the necessary authority to solicit expertise regarding grid impact and to implement solutions should be involved in the process. The most appropriate venue for conducting this outreach and for assessing the information obtained on a more comprehensive basis is the Illinois General Assembly.

C. The General Assembly is Better Situated to Assess and Address the Economic Impact of Adopting California Standards

The Illinois General Assembly is in a better position to assess the economic impacts of adopting clean car and truck standards and to determine and implement funding solutions as needed. Significant economic impacts are foreseeable if the proposed rule is adopted, including negative impacts to State motor fuel tax and sales tax revenues and the competitiveness of Illinois businesses relative to businesses in surrounding states that have not adopted California standards.

While the Rule Proponents describe the costs and benefits of the proposed rule in the Statement of Reasons, such costs and benefits concentrate on public health and economic benefits rather than on adverse economic impacts to Illinois government, residents, and businesses. For example, the Rule Proponents initially provided no analysis on the loss of motor fuel and sales tax revenues if the proposed rule is adopted. However, at the first hearing, the Board and Agency asked whether Rule Proponents would "provide for all participants' review" an analysis of Illinois fuel tax revenues with adoption of the proposed rules. Tr. December 2, 2024, Hearing, 57:9-24, 58:1-7, 59:15-17, 61:17-22, 62:15-20, 62:24, and 63:1-2. In response, the Rule Proponents commissioned an outside analysis of IDOT's *Memorandum on Illinois Sources of Transportation Funding* (January 2024), by Environmental Resources Management, Inc., that was filed with the Board on March 6, 2025. ERM Analysis, Hr. 2, Exh. 2, Exhibit A.

Mary Tyler, Policy Director of the Indiana, Illinois, Iowa Foundation for Fair Contracting, testified in opposition to the rule proposal "because Illinois's primary source of transportation infrastructure funding will be adversely impacted by the increased use of electric vehicles." Tr. March 11, 2025, Hearing, 31:5-9. She indicated, "Data from the Illinois Comptroller shows that revenue from the MFT [motor fuel tax] generated 57% of total

transportation revenues in fiscal year 2024, totaling $2.8 billion for the year." R24-17, *Pre-Filed Testimony of Mary Tyler in Opposition of Rule Proponents' Regulatory Proposal*, January 21, 2025, at 7, (Hr. 2, Exh. 26, at 7). Portions of this revenue are allocated to local governments. For fiscal year 2024, from the motor fuel tax revenue, Illinois counties received $350 million, Illinois townships received $159 million, and Illinois municipalities received $490 million. *Id*. at 11. Any reduction in the motor fuel tax revenue will therefore impact funding for state as well as local government. *Id.; see also*, Tr. March 11, 2025, Hearing, 33. Portions of the revenue are also allocated to transit systems; in fiscal year 2024, transit systems in Chicago received $272 million and transit systems in other areas of the state received $30 million. *Id*. at 33-34.

At hearing, Ms. Tyler testified that "as the number of EVs increase . . . motor fuel tax revenue will decrease as less gallons of gas are purchased." Tr. March 11, 2025, Hearing, 31:17-22. She explained that, while EV owners are currently required to pay a fee of $100 per year, it is not enough to offset the lost motor fuel tax revenue and, in fact, the fee would need to be slightly more than doubled for the average driver in order for the State to break even. *Id*. at 32. Those calculations do not include the additional lost revenue to the State from the sales tax of motor fuels. *Id*. She testified that, even absent adoption of the proposal before the Board, the State's motor fuel tax revenue is inadequate, *Id*. at 39-40, but explained that the proposed rules would exacerbate the problem. *Id*. at 42:11-15.

Ms. Tyler also testified concerning the reduction in transportation funding from adoption of the proposed rule and how such a reduction would filter down to construction jobs related to roads, bridges, and transit systems. *Id*. at 34-35 and 44:17-23. She explained various ways in which policymakers might consider increasing revenues from EVs, including an increase in EV

registration fees, a vehicle miles traveled fee (or road usage charge) that would apply to all vehicles, and a per-kilowatt fee on public charging. *Id*. at 52 and Hr. 2, Exh. 26, at 59.

Neither the funding "fixes" suggested by Ms. Tyler, nor the policy solution discussed in the Rule Proponents' ERM Analysis, however, can be effectuated by the Board in this rulemaking proceeding, but would rather require action by the Illinois General Assembly, action that the Board has no ability to compel. Ms. Tyler also explained that, even if the Illinois General Assembly opted to pursue a road usage charge program or vehicle miles travelled program, "it's going to take a long time to fully implement and to . . . get off the ground." Tr. March 11, 2025, Hearing, 68:23-24 and 69:1. Based on the above, it is clear that the Board's adoption of California standards would, at a minimum, exacerbate road funding shortfalls, creating another implementation issue for the Illinois General Assembly. The Illinois General Assembly is the better forum for considering whether to adopt California standards and how to address the related State funding issues that adoption could create.

Along with economic impacts on State revenues, economic impacts on Illinois businesses are foreseeable, should the Board adopt the rule proposal. Representatives of the Illinois Trucking Association and the Mid-West Truckers Association, Inc., testified at the second hearing regarding how adoption of the rule proposal may affect the trucking industry. They conveyed that if the rule is adopted, it would lead to trucking companies relocating out of state or registering out of state so as not be at a disadvantage compared to trucking companies in neighboring states. Matthew Hart, Executive Director of the Illinois Trucking Association, stated at hearing, "It would only regulate vehicles in Illinois. It would not apply to out-of-state companies, or to Illinois companies who then choose to license their truck from one of their terminals in another state. As was pointed out by the Illinois Farm Bureau, this would also put

Illinois-based companies at a disadvantage. They would be then competing with surrounding states who would not have to comply with this type of mandate. . . We can easily move our trucking companies, and it's a question that we debate every day: Is it worth it to stay here? Should we move our company to another state and continue to serve the people in this state? Should we move more of our operations to a terminal that's in another state?" Tr. March 10, 2025, Hearing, 247:9-24 and 248:1-5. The Illinois Trucking Association also believes "that this issue is best debated in a venue such as the Illinois General Assembly." *Id*. at 248:13-15.

Further, in response to a Board question asking what would be a realistic timeframe that would make the rules work for the trucking industry to achieve 20% electric truck sales as well as providing for charging infrastructure, Mr. Hart responded, "That would require, to hit 20 percent of the new registrations . . . -- that would mean 7,600 trucks. Last year, we registered 272[10]. So trying to jump from 272 trucks to 7,600 trucks is [sic] just two years is just not achievable. And our manufacturers are just not making electric -- they are just simply not available." *Id*. at 250:2-10. Mr. Hart conducted a quick survey of the Illinois Trucking Association's largest retailers in Chicago, and stated, "They have sold one. One electric truck in the city of Chicago." *Id*. at 250:17-19. And as to truck charging infrastructure, Mr. Hart expressed concern with limited current infrastructure, stating, "But right now, there is just no place, even if we did have the electric trucks, which we don't, we have no place to fuel them. We have no place to charge them." *Id*. at 251:8-11.

[10] Mr. Hart indicated that this data comes from Exhibit 1 that "shows ATD/S&P YTD [year-to-date] IL new vehicle registration data for Classes 3-8 through November 2024. Total new registrations for these Classes over this period were 38,118 vehicles. BEVs comprised 0.7% of this total." *See*, R24-17, *Illinois Trucking Association Response to Questions*, March 3, 2025, at unnumbered page 2 and Exhibit 1 (Hr. 2, Exh. 15, at unnumbered page 2 and Exhibit 1); *see also*, R24-17, *Pre-filed Testimony of Matthew Hart, Executive Director, Illinois Trucking Association, January 21, 2025*, at unnumbered page 2 (Hr. 2, Exh. 14, at unnumbered page 2). However, the Agency does not have access to the original data to review.

Matt Wells, Vice President of the Mid-West Truckers Association, Inc., also conveyed at hearing the competitive disadvantage for the Illinois trucking industry if the proposed rule is adopted by the Board. Mr. Wells stated as follows:

> Hence the whole point of my testimony is that we're not stopping anybody from coming into this state that doesn't have to comply with these rules . . . Nor are we preventing schools and businesses to outsource their purchase of vehicles in other states. It's a very easy task to accomplish. Start a leasing company in another state, you purchase those vehicles in another state, you register them in that state, and you operate them here in the State of Illinois. None of these rules stop this from happening, at all. Nor do they stop them from Indiana, Iowa, Wisconsin, Kentucky, Missouri, from coming into our state and operating vehicles that don't have to follow these set of rules. It creates a distinct competitive disadvantage, especially when you talk about Low NOx.

Tr. March 11, 2025, Hearing, 22:11-24 and 23:1-6.

Substantial small business impacts are also possible. Noah Finley, State Director for the National Federation of Independent Small Business ("NFIB"), commented, "In a recent survey of NFIB members in Illinois, an overwhelming majority, 99 percent of them, opposed the banning of the sale of new gas- and diesel-powered vehicles. In a follow-up survey that we did for our members, 90 percent of small business respondents indicated that these rules that are under consideration today would impact their businesses. Many indicated that if these rules were adopted, they would reevaluate their current business practices, and a significant percentage of them also indicated that they would consider moving out-of-state." Tr. March 10, 2025, Hearing, 222:8-21. [11]

It is not apparent that Rule Proponents' analysis took into account the point made by the industry groups, that the Board's adoption of California standards could make Illinois businesses less competitive relative to businesses in neighboring states, which could still operate their own

[11] In its January 2025 Regulatory Agenda as to the Illinois Clean Car and Truck Standards, the Board stated, "This rulemaking will not affect any small business, small municipality, or not-for-profit." 49 Ill. Reg. 900, 922 (January 17, 2025). There appears to be an insufficient basis in the record for this statement.

more polluting vehicle fleets in Illinois. The Illinois Automobile Dealers Association ("IADA") stated that, while the Rule Proponents "cite job creation as a cornerstone of ACC II's economic promise, the ERM report shows a net gain of just 60 jobs in Illinois by 2050 under ACC II scenarios." R24-17, *Joint Testimony of Mike Stieren & Larry Doll*, at 16, (Hr. 2, Exh. 11, at 16) and R24-17, *Response to Questions by Lawrence R. Doll and Mike Stieren*, March 3, 2025, at 39, (Hr. 2, Exh. 12, at 39), referencing the Rule Proponents' Statement of Reasons, Exhibit 2, at 124 (Hr. 1, Exh. 1, at Exhibit 2, at 124). To be clear, though, these are not 60 jobs in Illinois; these are 60 net jobs *nationally*. *Id*. The Rule Proponents assessed the national, macroeconomic impacts of adopting the Board's adoption of ACC II standards—not State-specific or regional impacts. *Id*. at 123-24.

The same is true of Rule Proponents' economic analysis of California clean truck standards—which actually showed a net *loss* of jobs nationally by 2045 if the Board adopts the standards. (Hr. 1, Exh. 1, at Exhibit 1, at 92). Per the report prepared by the Rule Proponents' consultant:

> The transition from gasoline and diesel M/HD vehicles to ZEVs will have significant impacts on the U.S. economy, with substantial job gains in many industries (e.g., battery and electric component manufacturing, charging infrastructure construction, electricity generation), accompanied by fewer jobs in other industries (e.g., engine manufacturing, oil exploration and refining, gas stations, auto repair shops).
>
> This analysis used the Impact Analysis for Planning (IMPLAN) model to estimate these macroeconomic effects of the modeled Clean Truck policy scenarios based on estimated changes in spending in various industries (relative to the baseline scenario). These estimates of spending changes by industry were developed from the fleet cost analysis. For example, under the modeled Clean Truck policy scenarios, more money will be spent to manufacture batteries and electric drive components for ZEVs, but less will be spent to manufacture gasoline and diesel engines, and transmissions. Similarly, less money will be spent by fleets to purchase petroleum fuels, but more will be spent to purchase electricity and hydrogen . . . .

> *The IMPLAN analysis was run at the national level, but assuming only the industry spending changes (from application of the policy scenarios) occurring due to M/HD vehicle purchase and use in Illinois*.

Id. at 91-92 (emphasis added).

The Rule Proponents' analysis therefore has nothing to say about the concerns of regional displacement raised by multiple industry groups. On a national, macroeconomic level, the transition from internal combustion to electric vehicles associated with the Board's adoption of California standards might have a modest economic impact, positively or negatively. But that analysis apparently did not consider the industry groups' more specific observation that Illinois—unlike the western and northeastern states that currently have adopted California standards—would be an island among multiple states that have not adopted California standards.[12] As trucking groups testified, out-of-state companies could continue to operate fleets in Illinois unimpacted by the standards, and Illinois businesses could opt to move across the border.

In light of these unresolved issues, more information is needed regarding economic impact, which is likely to be widespread and significant. Other entities with the necessary authority to solicit expertise regarding economic impact and to implement funding solutions should be involved in the process, in particular the Illinois General Assembly.

D. The Illinois General Assembly is Better Suited to Assess and Address Feasibility Issues

Several feasibility issues were identified by participants in this rulemaking, mainly focused on the ability to reach sales required to comply with the rule proposal in a short timeframe, lack of sufficient consumer demand, the utility of compliance flexibilities set forth in

[12] The 11 states that currently have adopted ACC II are identified in Alliance for Automotive Innovation, *Get Connected: Electric Vehicle Quarterly Report*, Fourth Quarter 2024 at 9, https://www.autosinnovate.org/GetConnected (last visited March 31, 2025)

the rule proposal, contrast with federal standards, and insufficient funding and infrastructure. A broader assessment of these issues by the Illinois General Assembly is needed to determine whether compliance with the standards is tenable at this time in Illinois.

First, information and testimony were provided to the Board regarding current EV sales compared with the massive increase in sales that would be needed to comply with the rule. The State's 2024 new EV market share was 7.76%, down from 7.80% in 2023. Alliance for Automotive Innovation, *Get Connected: Electric Vehicle Quarterly Report*, Fourth Quarter 2023 at 6 and Fourth Quarter 2024 at 9, https://www.autosinnovate.org/GetConnected (last visited March 31, 2025). If the ZEV standard in the proposed rule is adopted, each manufacturer is initially mandated to meet a 59% ZEV sales requirement of new model year 2029 passenger cars and light-duty truck produced and delivered for sale in Illinois. Specifically, Illinois' EV market share must go from 7.76% in 2024 to 59% in 2028 (for model year 2029). Such an increase is colossal.

While the Rule Proponents state that the proposed rule includes "numerous compliance flexibilities" such as the use of PHEV vehicles values, environmental justice vehicle values, and early compliance vehicle values to meet requirements, "[m]eeting the most-likely ZEV mandate scenario with all flexibilities and automakers purchasing credits from Tesla and other EV-only automakers still requires a 620 percent increase from 2024CY ZEV sales." R24-17, *Pre-Filed Testimony of Steven Douglas in Opposition of Rule Proponents' Regulatory Proposal*, January 21, 2025, at 36, (Hr. 2, Exh. 6, at 36). Moreover, ZEV sales in California have hit a plateau [25% in 2023] and did not significantly increase in 2024. R24-17, *Pre-Filed Answers of Steven Douglas on behalf of the Alliance for Automotive Innovation*, March 3, 2025, at 37, citing to Exhibit H, (Hr. 2, Exh. 7, at 37, citing to Exhibit H).

The Rule Proponents do not seem to appreciate the magnitude of the EV sales increases required to comply with the proposed rules. In response to a pre-filed question concerning that the number of EV sales needed to meet ACC II requirements for MY2029, Rule Proponents answered as follows:

> The regulatory requirement is 59% new ZEV sales in Model Year 2029. However, there are flexibilities within the regulation to help lower this requirement. Taking these flexibilities into account, the de facto requirement for MY 2029 will be around 50% rather than the nominal 59%. There are four model years (not three) available to move from 8.2% in MY 2024 to 50% (not 59%) in MY 2029. *Thus annual ZEV sales growth of about 10% will be sufficient to reach compliance in MY 2029*.

Hr. 1, Exh. 14, at 57 (emphasis added). At hearing, when asked about annual ZEV sales growth of about 10 percent being sufficient to reach compliance in model year 2029, as the Rule Proponents had claimed, Rule Proponents' witness Muhammed Patel conceded that, based on new vehicle sales, the proposed rule instead would require ZEV sales to more than double the first year—i.e., over a ***100 percent*** year-over-year increase in sales. Tr. December 2, 2025, Hearing, 166:23-24, 167:1-9, 167:22-24, and 168:1.

In considering whether automakers will be able to achieve such massive sales increases, the Board should carefully consider whether there is adequate consumer demand for EVs. As Mr. Douglas observed at hearing on behalf of the Alliance for Automotive Innovation ("AAI"), "[Y]ou do have to have buyers for these vehicles." Tr. December 2, 2024, Hearing, 35:17-18. The IADA testified that, despite the growing number of EVs being sold, a clear mismatch between inventory and demand persists. Hr. 2, Exh. 11, at 6. "EV inventory declined by 2.6% compared to August 2024, reflecting adjustments by manufacturers to address oversupply. Meanwhile, EVs remained on dealer lots for an average of 103 days—longer than the 74 days for gasoline vehicles—underscoring a slower pace of consumer adoption and widening the gap between production and demand." *Id*. at 6-7. In addition, the IADA explained that several

factors influence inventory turnover, but the primary driver of extended EV inventory times is weak consumer demand. Hr. 2, Exh. 12, at 18. Ultimately, testimony from the IADA stressed that Illinois consumers are not accepting and purchasing EVs in the numbers that would be necessary to comply with the proposed rules. Hr. 2, Exh. 11, at 6-7, and Tr. March 10, 2025, Hearing, 117:12-24 and 118:1-8.

Current opinion polling demonstrates the unlikelihood of the explosive EV sales growth that would be needed to comply with California standards. Recent results from Gallup's annual environment survey, conducted March 3-16, 2025, found that the percentage of Americans who either owned or expressed interest in owning an EV decreased from 59% in 2023 to 51% in 2024 and remains at the reduced level today. Saad, Lydia, *U.S. Electric Vehicle Interest Steady at Lower 2024 Level*, News.Gallup.com, April 8, 2025, https://news.gallup.com/poll/658964/electric-vehicle-interest-steady-lower-2024-level.aspx. Fifty-one percent of U.S. adults report that they already own an EV (3%), are seriously considering buying one (8%) or might consider buying one in the future (40%). *Id*. That leaves 47% saying they would not buy one, similar to the 48% a year ago but up from 41% in 2023. *Id*. The most eager EV supporters — those who say they own one or are seriously considering it — declined to 11% this year from 16% in 2024. *Id*. In addition to gauging Americans' interest in EVs, the latest survey included a new question measuring public preferences for hybrid vehicles. Sixty-five percent of U.S. adults either own a hybrid vehicle (8%), are seriously considering buying one (10%) or are open to buying one in the future (47%). *Id*. Interest in hybrids exceeds EVs in both current ownership (8% vs. 3%, respectively) and potential buying (57% vs. 48%). *Id*. In other words, a defining feature of the California standards—preferring BEVs over other

vehicles, including even PHEVs—is out of the step with public opinion as captured by last month's polling.

Businesses typically do not rely on consumer choices for purposes of complying with Board rules, as this rule would require. For example, Mr. Patel, Rule Proponents' witness, confirmed at hearing in response to the following question:

> Q And would you agree that there are two ways to comply, one, an auto maker can increase the sale of ZEV; and then, two, an auto maker can also decrease gasoline vehicles sold, would that be correct?
>
> A I would add another factor, which is auto makers can use the extensive compliance flexibilities within the standard to also comply. So, yes, they can increase their ZEV sales as a proportion of their total sales, use the compliance flexibilities, or potentially, as you're implying, yes, manufacturers could comply by reducing their associated ICE -- by ICE, I mean internal combustion engine vehicle sales.

Tr. December 2, 2024, Hearing, 159:6-17. "Thus, automakers are left to increase ZEV sales and dramatically decrease gas vehicle sales." Hr. 2, Exh. 6, at 25. Whether consumers in Illinois are ready for the transition to ZEVs required by the California standards is not so much a technical issue as an issue of public opinion that is better addressed by the Illinois General Assembly than by the Board.

Along these same lines, it is worth noting that California's policies have had significantly more time to prepare the state for EV expansion than the more recently enacted policies in Illinois. Testimony was presented in this proceeding explaining that, for well over a decade, California has developed and implemented a suite of policies to support ZEV market development. *Id*. at 38. "The ZEV market has responded to those policies and California has the highest ZEV market penetration in the nation . . . at more than 25 percent ZEV sales. However, these policies are not without cost and did not come about overnight." *Id*.

A non-exhaustive list of ZEV funding programs implemented in California by several state agencies is set forth in Mr. Douglas' testimony. *Id*. at 39. While Illinois' current EV policy clearly supports the adoption of EVs, California began making its own EV investments a decade-and-a-half ago. "California provided EV incentives 15 years ago (2010), the legislature provided $100 million annually for EV infrastructure (including $20 million annually for hydrogen fueling stations) over 10 years ago (2013), and the PUC [Public Utilities Commission] began developing utility-based transportation electrification programs for infrastructure about 7 years ago. As a result, California is years ahead of Illinois." *Id*. at 40.

As discussed above, Illinois is taking action on multiple fronts to invest tens of millions of dollars a year in EVs and charging infrastructure. But a simple comparison of Illinois' 2024 new EV market share of 7.76% to California's share of 26.15% demonstrates that Illinois is hardly on a glide path to meet the California standards' aggressive new vehicle sales requirements. Alliance for Automotive Innovation, *Get Connected: Electric Vehicle Quarterly Report*, Fourth Quarter 2024 at 9, https://www.autosinnovate.org/GetConnected (last visited March 31, 2025).[13]

Whether the compliance flexibilities for manufacturers cited by the Rule Proponents will be feasible in Illinois is another issue for consideration. Regarding the environmental justice vehicle values involving vehicles sold at the end of lease to Illinois dealerships participating in a financial assistance program, the IADA informed the Board that it is unaware of any dealerships participating in any dealer financial assistance program that would qualify under this framework. Hr. 2, Exh. 12, at 11. The IADA indicated that to establish a dealer financial assistance program that aligns with the proposed rule, Illinois would need to develop and fund a program like

[13] Notably, though, Illinois did have the highest new EV market share for any Midwestern state during 2024. *Id.*

California's Clean Cars for All. *Id*. California has allocated $436 million to this initiative, offering up to $12,000 in rebates for low-income consumers purchasing a ZEV, with dealerships playing a direct role in the program. *Id*. For Illinois to create a similar program, IADA testified that it would require a significant financial investment focused on expanding consumer rebates for ZEV purchases, dealer participation incentives, and program administration and outreach. *Id*. at 11-12.

The final environmental justice vehicle values under the proposed rule involve additional 0.10 vehicle values for each new ZEV and PHEV through the 2029 model year delivered for sale in Illinois with a manufacturer's suggested retail price ("MSRP") less than or equal to $20,275 for passenger cars and less than or equal to $26,670 for light-duty trucks. However, the IADA's research indicates that the 2025 Nissan Leaf has the lowest MSRP for a passenger car at $29,280, and the 2025 Ford F-150 Lightning Pro has the lowest MSRP for a light-duty truck at $47,780. *Id*. at 12-13. Therefore, while the MSRP values are adjusted annually, beginning in model year 2026, it does not appear that any ZEVs qualify currently under this requirement.

Lastly, manufacturers may earn early compliance vehicle values for sales that are more than 7% of their sales in model years 2027 and 2028 to meet up to 15% of the total annual ZEV requirement in model years 2029 through 2031. However, to maximize the use of early compliance vehicle values, manufacturers would need to sell over 22% ZEVs in model years 2027 and 2028. Hr. 2, Exh. 6, at 19. This is undoubtedly an uphill climb.

Finally, in assessing whether to adopt the standards, consideration should be given to the difference between the California standards and the currently applicable federal standards. In contrast to California's standards allowing specific automotive technologies and banning others, the federal emissions standards dictate the level of emissions that vehicles must meet. Under the

USEPA's emissions standards for criteria pollutants and GHGs for light-duty vehicles and medium-duty vehicles, *see Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles*, 89 Fed. Reg. 27842 (April 18, 2024), automobile manufacturers have the discretion to choose the mix of technologies that achieve compliance across their fleets. In addition, USEPA promulgated GHG emissions standards for model year 2032 and later heavy-duty highway vehicles that phase in starting as early model year 2027 for certain vehicle categories. *Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3*, 89 Fed. Reg. 29440 (April 22, 2024). The USEPA also adopted a rule to reduce air pollution from highway heavy-duty vehicles and engines. *Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards*, 88 Fed. Reg. 4296 (January 24, 2023).

Furthermore, the National Highway Traffic Safety Administration ("NHTSA"), on behalf of the USDOT, finalized Corporate Average Fuel Economy ("CAFE") standards for passenger cars and light trucks that increase at a rate of 2 percent per year for passenger cars in model years 2027-2031, 0 percent per year for light trucks in model years 2027-2028, and 2 percent per year for light trucks in model years 2029-2031. *Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027 and Beyond and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030 and Beyond*, 89 FR 52540 (June 24, 2024). The NHTSA also finalized fuel efficiency standards for heavy-duty pickup trucks and vans for model years 2030-2032 that increase at a rate of 10 percent per year and model years 2033-2035 that increase at a rate of 8 percent per year. *Id*. However, as discussed in more detail below, the Agency acknowledges that these federal standards may be impacted under the current administration.

E. The Illinois General Assembly Is Best Suited to Determine Whether to Adopt California Standards In Light of Uncertainty at the Federal Level

Section 177 of the Clean Air Act ("CAA") grants other states the right to adopt the California standards if "such standards are identical to the California standards for which a waiver has been granted for such model year" and such states adopt the standards at least two years before commencement of such model year. 42 USC § 7507. Currently, there is uncertainty regarding the future enforceability of California standards, particularly based upon past federal actions that may be repeated, and there is little utility in adopting the California standards if they will be unenforceable. Moreover, there is uncertainty regarding the continuing availability, nationwide, of federal funding to support EV adoption, and in the automobile industry, in general, in light of recently imposed tariffs. If the Illinois General Assembly desires to adopt California standards, it can better assess the most appropriate timing once some of the unknowns described below are resolved.

Grant of California Waiver

The USEPA granted California a waiver for the ACT regulation on April 6, 2023 (*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), and waivers for the Advanced Clean Cars II and Low NOx regulations on January 6, 2025 (*California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision*, 90 Fed. Reg. 642, and *California State Motor Vehicle and Engine and Nonroad Engine Pollution Control Standards; The "Omnibus" Low NOx Regulation; Waiver of Preemption; Notice of Decision*, 90 Fed. Reg. 643).

First Trump Administration

During the first Trump administration in August 2018, the USEPA, jointly with the NHTSA, proposed to withdraw California's 2013 waiver for its Advanced Clean Cars Program ("ACC Program"). *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks*, 83 Fed. Reg. 42986 (August 24, 2018). In 2019, the USEPA withdrew California's 2013 waiver for its ACC Program. *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program*, 84 Fed. Reg. 51310 (September 27, 2019). In the final joint rule, the NHTSA stated that the Energy Policy and Conservation Act ("EPCA") preempts California's standards because the statute preempts state laws related to federal fuel economy standards. In conjunction with NHTSA's determination, the USEPA withdrew California's 2013 CAA preemption waiver for its ACC Program that included an LEV Program, which set emissions requirements for new cars in Model Years 2017 to 2025 with the goal of reducing carbon dioxide emissions by 34%, and a ZEV Program, which required about 15% of manufacturers' fleets to be electric vehicles by Model Year 2025. *Id.*

On April 30, 2020, the USEPA and NHTSA released the second part of the rulemaking, *The Safer Affordable Fuel-Efficient ("SAFE") Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks,* 85 Fed. Reg. 24174. This final rule contained revised GHG and CAFE standards, which increased in stringency only 1.5% each year through model year 2026 compared with the standards issued in 2012, which would have required about a 5% annual increase.

In the period between the first Trump Administration USEPA's initial proposal to revoke California's waiver and the actual revocation, California amended its existing GHG rules for model years 2021 through 2026 to state that, should the USEPA change federal emission

standards, vehicle and engine manufacturers who complied with the federal standards would no longer be considered in compliance with the significantly differing California standards. State of California, Office of Administrative Law, Notice of Approval of Regulatory Action, https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2018/leviii2018/form400dtc.pdf. In other words, the California standards had included a "deemed to comply" provision such that compliance with the 2018 federal program (regulations promulgated in 2012 establishing federal GHG standards for Model Years 2022-2025) was deemed as compliance with the California standards. 13 CCR 1961.3(c). Likewise, compliance with the 2018 federal program qualified as compliance in states that had adopted California's vehicle standards ("Section 177 states"). In 2018, though, the California Air Resources Board ("CARB") declared that it would no longer accept compliance with federal emissions standards as a safe harbor if the USEPA were to revise the federal rules. Accordingly, California departed from a prior deal struck with industry and the USEPA in promulgating the first harmonized GHG program at the outset of the Obama Administration (which, in turn, resolved years of litigation relating to state regulation of GHGs from motor vehicles). Letter from Mary D. Nichols, Chairman, to Lisa Jackson, Administrator, USEPA, July 28, 2011, https://www.epa.gov/sites/default/files/2016-10/documents/carb-commitment-ltr.pdf.

Then, during the summer of 2019, CARB and the major automakers BMW NA, Ford Motor Company, American Honda Motor Co., Inc., Volvo Car USA, LLC, and Volkswagen Group of America, Inc., announced their entry into Framework Agreements. Framework Agreements on Clean Cars, https://ww2.arb.ca.gov/sites/default/files/2020-08/clean-car-framework-documents-all-bmw-ford-honda-volvo-vw.pdf. The Framework Agreements were based on the parties' mutual interest in mitigating their respective risks and resolving potential

legal disputes concerning the authority of CARB and Section 177 states to adopt and enforce GHG emissions standards applicable to new light-duty motor vehicles manufactured or distributed by the automakers for model years 2021-2026 in light of the SAFE Vehicles Rule Part One and Part Two. The Agreements imposed alternative GHG standards for model year 2021 through 2026 light-duty vehicles.

Consequently, during the period of revocation of CARB's waiver, the automobile manufacturers were subject to regulatory uncertainty. Some manufacturers complied with the federal regulations, which the USEPA and NHTSA maintained were the only lawful regulations. Other manufacturers entered into agreements with CARB to comply with the requirements of the Framework Agreement. Overlaying all of this, CARB's own original GHG emissions standards remained the law in California, and CARB maintained that the waiver was improperly revoked, raising the specter of retroactive enforcement should it be restored. Letter from Richard W. Corey, Executive Officer, CARB, to Michael Regan, Administrator, USEPA (September 27, 2021), https://ww2.arb.ca.gov/sites/default/files/2021-09/2021-9-27-final-CARB-Restored-MY-2023-2026-USEPA-GHG-Stds-RWC-signed-9-27-21.pdf.

There was also extensive litigation challenging the SAFE Vehicles Rule. California filed suit, together with the Section 177 States and other plaintiffs, challenging the NHTSA action in the United States District Court for the District of Columbia. *State of California v. Chao*, No. 19-CV-02826 (D.D.C. filed Sept. 20, 2019). California (including CARB), the Section 177 States, and others also petitioned for review of the USEPA and NHTSA actions in the SAFE Vehicles Rule Part One in the United States Court of Appeals for the District of Columbia Circuit. *State of California v. Wheeler*, No. 19-1239 (D.C. Cir. filed Nov. 15, 2019). There were also proceedings challenging the NHTSA's rule preempting state limits on tailpipe GHG

emissions and ZEV mandates and USEPA's withdrawal of California's waiver. *See, e.g., Union of Concerned Scientists v. Nat'l Highway Traffic Safety Admin*., No. 19-1230, consolidated with Nos. 19-1239, 1241, 1242, 1243, 1243, 1246, 1249, 1174, and 1178 (D.C. Cir., filed Dec. 26, 2019); however, the parties filed a stipulation of dismissal after the petitions had been held in abeyance since 2021. 2024 U.S. App. LEXIS 18471 (July 25, 2024).

Biden Administration

In 2021, the Biden Administration's USEPA revisited the 2019 withdrawal of the 2013 waiver. *California State Motor Vehicle Pollution Control Standards*; *Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption*; *Opportunity for Public Hearing and Public Comment*, 86 Fed. Reg. 22421 (April 28, 2021). On March 14, 2022, USEPA reinstated its 2013 waiver for California's ACC Program. *California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision*, 87 Fed. Reg. 14332. As a result of that reinstatement, California's LEV and ZEV standards for model years 2017 through 2025 came back into force. *Id.* at 14333. The USEPA provided three explanations for its waiver reinstatement decision: USEPA exceeded its inherent authority to revisit its 2013 decision; it improperly rejected the "whole program" approach; and it improperly considered the NHTSA's view of the EPCA, which was beyond the scope of Section 209(b) of the CAA. *Id.* at 14333-35.

The Biden Administration USEPA's decision to reinstate CARB's waiver was also challenged by a group of states and fuel producers. Both sets of petitioners argued that the USEPA exceeded its authority under the CAA and violated a constitutional requirement to treat states equally in terms of their sovereign authority. *Ohio v. EPA*, 98 F.4th 288 (D.C. Cir. 2024), *cert. granted in part sub nom. Diamond Alternative Energy, LLC v. EPA*, 2024 U.S. LEXIS 5029

(Dec. 13, 2024), and *cert. denied sub nom. Ohio v. EPA*, 2024 U.S. LEXIS 5089 (Dec. 16, 2024). The District of Columbia Circuit held that fuel petitioners lacked standing to raise their statutory claim, and that state petitioners lacked standing to raise their preemption claim, because neither set of petitioners demonstrated that their claimed injuries would be redressed by a favorable decision by the court. *Id.* at 294. While the state petitioners had standing to raise their constitutional claim, the court rejected it on the merits. *Id.*

President Biden's economic agenda to advance the future of EVs included the Inflation Reduction Act of 2022, which provides incentives for buyers of new and used EVs, e.g., $7,500 consumer tax credit for EV purchases, credits to help manufacturers retool existing facilities and build new manufacturing in the United States, and grants to deploy zero emission heavy-duty vehicles; the Bipartisan Infrastructure Law, which invests $7.5 billion to build a national network of 500,000 EV chargers so that charging EVs is predictable, reliable and accessible, more than $7 billion to ensure domestic manufacturers have the critical minerals and other components necessary to make batteries, and over $10 billion for clean transit and school buses; and the CHIPS and Science Act that makes critical investments in building domestic capacity for the semiconductors necessary for EVs. "White House Fact Sheet: President Biden's Economic Plan Drives America's Electric Vehicle Manufacturing Boom." The White House (September 14, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/14/fact-sheet-president-bidens-economic-plan-drives-americas-electric-vehicle-manufacturing-boom/.

Second Trump Administration

Just as the USEPA rescinded California's standards under the first Trump administration, a federal shift in policy to do the same under the current Trump administration may be underway. On January 20, 2025, President Trump issued Executive Order 14148, *Initial Rescissions of*

Harmful Executive Orders and Actions, that revoked President Biden's Executive Order 14037 of August 5, 2021, *Strengthening American Leadership in Clean Cars and Trucks*, which, in part, directed the Administrator of the USEPA to initiate a rulemaking under the CAA to establish new multi-pollutant emissions standards, including for GHG emissions for light- and medium-duty vehicles beginning with model year 2027 and extending through and including at least model year 2030, and the Secretary of Transportation to establish new fuel economy standards for passenger cars and light-duty trucks beginning with model year 2027 and extending through and including at least model year 2030. 90 Fed. Reg. 8237 (January 28, 2025). In response, the Secretary of Transportation directed the NHTSA "to commence an immediate review and reconsideration of all existing fuel economy standards applicable to all models of motor vehicles produced from model year 2022 forward" and "propose the rescission or replacement of any fuel economy standards as determined necessary to bring the CAFE [corporate average fuel economy] program into compliance with Administration policy and the requirements of the law." Memorandum from the Secretary of Transportation to the Office of the Administrator of the NHTSA, Office of the Assistant Secretary for Policy, and Office of the General Counsel, January 28, 2025, https://www.transportation.gov/sites/dot.gov/files/2025-01/Signed%20Secretarial%20Memo%20re%20Fixing%20the%20CAFE%20Program_0.pdf.

Furthermore, on January 20, 2025, President Trump issued Executive Order 14154, *Unleashing American Energy*, that provided, in part, as follows:

> Sec. 2. Policy. It is the policy of the United States:
> * * *
> (e) *to eliminate the "electric vehicle (EV) mandate"* and promote true consumer choice . . . by removing regulatory barriers to motor vehicle access; by ensuring a level regulatory playing field for consumer choice in vehicles; *by terminating, where appropriate, state emissions waivers that function to limit sales of gasoline-powered automobiles*; and by *considering the elimination of unfair subsidies and other ill-conceived government-imposed market distortions that favor EVs over other technologies and effectively*

mandate their purchase by individuals, private businesses, and government entities alike by rendering other types of vehicles unaffordable;
* * *

Sec. 3. Immediate Review of All Agency Actions that Potentially Burden the Development of Domestic Energy Resources. (a) The heads of all agencies shall review all existing regulations, orders, guidance documents, policies, settlements, consent orders, and any other agency actions . . . to identify those agency actions that impose an undue burden on the identification, development, or use of domestic energy resources — with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources — or that are otherwise inconsistent with the policy set forth in section 2 of this order, including restrictions on consumer choice of vehicles and appliances.

(b) Within 30 days of the date of this order, the head of each agency shall . . . develop and begin implementing action plans to suspend, revise, or rescind all agency actions identified as unduly burdensome under subsection (a) of this section, as expeditiously as possible and consistent with applicable law.
***

Sec. 4. Revocation of and Revisions to Certain Presidential and Regulatory Actions. (a) The following are revoked and any offices established therein are abolished:
* * *
(xi) Executive Order 14082 of September 12, 2022 (Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022); and
* * *

(c) Any assets, funds, or resources allocated to an entity or program abolished by subsection (a) of this section shall be redirected or disposed of in accordance with applicable law.

(d) The head of any agency that has taken action respecting offices and programs in subsection (a) shall take all necessary steps to ensure that all such actions are terminated or, if necessary, appropriate, or required by law, that such activities are transitioned to other agencies or entities.

Sec. 6. Prioritizing Accuracy in Environmental Analyses. * * *

(f) *Within 30 days of the date of this order, the Administrator of the EPA, in collaboration with the heads of any other relevant agencies, shall submit joint recommendations to the Director of OMB on the legality and continuing applicability of the Administrator's findings, "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," Final Rule, 74 FR 66496 (December 15, 2009).*

> Sec. 7. Terminating the Green New Deal. (a) *All agencies shall immediately pause the disbursement of funds appropriated through the Inflation Reduction Act of 2022 (Public Law 117-169) or the Infrastructure Investment and Jobs Act (Public Law 117-58), including but not limited to funds for electric vehicle charging stations made available through the National Electric Vehicle Infrastructure Formula Program and the Charging and Fueling Infrastructure Discretionary Grant Program, and shall review their processes, policies, and programs for issuing grants, loans, contracts, or any other financial disbursements of such appropriated funds for consistency with the law and the policy outlined in section 2 of this order. No funds identified in this subsection (a) shall be disbursed by a given agency until the Director of OMB and Assistant to the President for Economic Policy have determined that such disbursements are consistent with any review recommendations they have chosen to adopt.*
> * * *

90 Fed. Reg. 8353 (January 29, 2025) (emphasis added).

While it is difficult to confidently forecast federal actions at this time, the executive orders suggest the possibility of the federal government withdrawing California's waiver, as during the first Trump Administration. *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program*, 84 Fed. Reg. 51310 (September 27, 2019). In addition, elimination of the federal $7,500 EV tax credit, which was a keystone of federal support for EV adoption, would diminish consumer demand for EVs.[14]

Furthermore, the above Executive Orders direct all agencies to immediately pause the disbursement of appropriated funds through the Inflation Reduction Act of 2022, the Infrastructure Investment and Jobs Act, including but not limited to funds for electric vehicle charging stations made available through the NEVI Formula Program and the CFI Grant

[14] While funding decisions ultimately will be controlled by the congressional budgeting process, some federal legislators have already introduced bills to curtail support for EVs. In February 2025, Senator John Barrasso proposed a bill that would repeal the $7,500 tax credit for new EV purchases, end the $4,000 tax credit for used EV purchases, and eliminate federal incentives for EV charging infrastructure, among other things. S.541 – 119th Congress (2025-2026): Eliminating Lavish Incentives to Electric (ELITE) Vehicles Act, S.541, 119th Cong. (2025), https://www.congress.gov/119/bills/s541/BILLS-119s541is.pdf (last visited March 25, 2025). Simultaneously, Senator Deb Fischer reintroduced a separate bill that would impose a new $1,000 fee on EV purchases at the point of sale that is designed to roughly match the federal fuel taxes paid by gasoline-powered vehicle owners over 10 years. S.536 – 119th Congress (2025-2026): Fair Sharing of Highways and Roads for Electric Vehicles Act of 2025 or Fair SHARE Act of 2025, S.536, 119th Cong. (2025), https://www.congress.gov/119/bills/s536/BILLS-119s536is.pdf (last visited March 25, 2025).

Program, and review their processes, policies, and programs for issuing grants, loans, contract, or any other financial disbursements of such appropriated funds for consistency with the law and the outlined policy. 90 Fed. Reg. 8353, at 8357.

On January 28, 2025, State Attorneys General from 22 states, including Illinois, and the District of Columbia filed suit in the United States District Court for the District of Rhode Island challenging certain funding pauses associated with President Trump's Executive Orders, including Executive Order 14154. *New York v. Trump,* No. 1:25-CV-39 (D.R.I.). On January 31, 2025, the District Court of Rhode Island granted a temporary restraining order in favor of the plaintiffs. On March 6, 2025, the court granted the plaintiffs' motion for a preliminary injunction. Memorandum and Order (D.R.I. Mar. 6, 2025). On March 26, 2025, the First Circuit denied the defendants' motion for a stay pending the appeal of the district court's preliminary injunction order. *New York v. Trump,* No. 25-1236 (1st Cir. Mar. 26, 2025).

Following the President's directive, though, on February 6, 2025, the new leadership of the USDOT reviewed the policies underlying the implementation of the NEVI Formula Program and indicated that the current NEVI Formula Program Guidance dated June 11, 2024, and all prior versions are rescinded. Letter from Emily Biondi, Associate Administrator, Office of Planning, Environment and Realty, Federal Highway Administration ("FHWA"), USDOT, to State Department of Transportation Directors, February 6, 2025, https://www.fhwa.dot.gov/environment/nevi/resources/state-plan-approval-suspension.pdf (last visited March 25, 2025). The FHWA stated that it is updating the NEVI Formula Program Guidance to align with current USDOT policy and priorities, including those set forth in USDOT Order 2100.7, titled "Ensuring Reliance Upon Sound Economic Analysis in Department of Transportation Policies, Programs, and Activities." *Id*. The FHWA aims to have updated draft

NEVI Formula Guidance published for public comment in the spring, and after the public comment period has closed, FHWA will publish updated final NEVI Formula Guidance that responds to the comments received. *Id*. As result of the rescission of the NEVI Formula Program Guidance, the FHWA also immediately suspended the approval of all State Electric Vehicle Infrastructure Deployment plans for all fiscal years. *Id*. Therefore, effective immediately, no new obligations may occur under the NEVI Formula Program until the updated final NEVI Formula Program Guidance is issued and new State plans are submitted and approved. *Id*. Instructions for the submission of new State plans for all fiscal years will be included in the updated final NEVI Formula Program Guidance. *Id*. Since the FHWA is suspending the existing State plans, States will be held harmless for not implementing their existing plans. *Id*. Until new guidance is issued, reimbursement of existing obligations will be allowed so as not to disrupt current financial commitments. *Id*. Without approval of Illinois' plan, though, no new NEVI funds presently will be federally obligated.

On February 14, 2025, USEPA Administrator Lee Zeldin transmitted to Congress the Biden Administration's rules granting waivers that allowed California to preempt federal car and truck standards promulgated by the USEPA and USDOT's NHTSA. https://www.epa.gov/newsreleases/trump-epa-transmit-california-waivers-congress-accordance-statutory-reporting (last visited February 21, 2025). Agency actions are not typically transmitted to Congress but instead are published in the *Federal Register* as a "Notice of Decision," and by transmitting the waivers to Congress as "rules," the USEPA arguably opens them to consideration under the Congressional Review Act ("CRA"), which allows Congress to disapprove regulatory actions and forbids substantially similar future actions. However, a November 2023 opinion by the U.S. Government Accountability Office ("GAO") weighed in on

the question of whether a waiver granted for California's ACC I rule was subject to the CRA, and determined it was an "adjudicatory order," not a rule, and not subject to the CRA. U.S Gov. Accountability Office, B-3343309, *Environmental Protection Agency--Applicability of the Congressional Review Act to Notice of Decision on Clean Air Act Waiver of Preemption* (Nov. 30, 2023), https://www.gao.gov/products/b-334309 (last visited February 21, 2025).

In a letter in response to a congressional request, the GAO offered its opinion and reaffirmed its 2023 decision that waivers of preemption granted to California to set standards for mobile sources are decisions of record – not rulemakings – and are therefore not subject to review under the CRA. Letter to Congressional Requestors, U.S. Gov. Accountability Office, B-337179, *Observations Regarding the Environmental Protection Agency's Submission of Notices of Decision on Clean Air Act Preemption Waivers as Rules Under the Congressional Review Act* (March 6, 2025). https://www.gao.gov/assets/880/875948.pdf (last visited March 7, 2025).

On April 1, 2025, Representative James Comer (R-Ky), Chair of the House Committee on Oversight and Government Reform, and Representative Brett Guthrie (R-Ky), Chair of the House Committee on Energy and Commerce, submitted a letter to the GAO requesting documents and information surrounding the GAO's March 6, 2025, formal opinion concluding that the USEPA waivers of CAA preemption for California vehicle and engine regulations are not "rules" subject to the CRA and are instead adjudicatory orders. https://oversight.house.gov/wp-content/uploads/2025/04/Comer-Guthrie-GAO-California-waiver-040125.pdf (last visited April 4, 2025). Representatives Comer and Guthrie assert that "GAO arguing that Congress cannot use the CRA to repeal the waivers goes well beyond GAO's advisory role and raises questions about the process, motivations of those involved in the decision, and the institutional understanding of the GAO's role in the CRA process." *Id*. at 2. They request that GAO submit

documents related to its decision by April 15, 2025, "[i]n order to examine GAO's commitment to its non-partisan mission." *Id*.

On April 4, 2025, Republican members of the House Committee on Energy and Commerce introduced CRA resolutions to overturn the three California CAA preemption waivers that were transmitted to Congress by the USEPA in February 2025. H.J. Res. 88, introduced by Rep. John Joyce (R-PA), would repeal the waiver for the Advanced Clean Cars II Program https://www.congress.gov/119/bills/hjres88/BILLS-119hjres88ih.pdf (last visited April 4, 2025); H.J. Res. 87, introduced by Rep. John James (R-MI), would repeal the Advanced Clean Trucks waiver https://www.congress.gov/119/bills/hjres87/BILLS-119hjres87ih.pdf (last visited April 4, 2025); and H.J. Res. 89, introduced by Rep. Jay Obernolte (R-CA), would revoke the waiver for the Heavy-Duty Low-NOx "Omnibus" Rule https://www.congress.gov/119/bills/hjres89/BILLS-119hjres89ih.pdf (last visited April 4, 2025). The opinions from the GAO, as set forth above, conclude that the waivers are adjudicatory orders, not rules, and are therefore not subject to review under the CRA, and the Senate Parliamentarian has confirmed that the waivers are not subject to the CRA. At this time, companion resolutions have not been introduced in the Senate. When a CRA resolution of disapproval is passed by both the House and Senate, it is sent to the president for approval or veto. If the resolution is approved, the waivers will be nullified and under the CRA, the USEPA will be forbidden from taking any future action that is "substantially the same."

These executive orders, litigation, and congressional actions, at a minimum, cast into doubt the extent to which the federal government will continue providing support for EV adoption across the United States as a whole, including in individual states like Illinois. They call into question whether federal funding that Rule Proponents indicate would aid

implementation of clean car and truck standards (for example, funding that would support installation of adequate public charging stations or subsidize the cost of the purchase of EVs in Illinois) [15] ultimately will be made available over the course of this decade. While the Illinois General Assembly has appropriated $14 million to the Agency for the EV Rebate Program for the current fiscal year, this is not nearly enough funding, by itself, to support compliance with California sales requirements.

Most recently, President Trump issued Proclamation 10908, *Adjusting Imports of Automobiles and Automobile Parts Into the United States*, that imposes a 25% tariff on all vehicles assembled outside of the United States, along with certain foreign-sourced automobile parts. 90 Fed. Reg. 14705 (April 3, 2025). In December 2024, the average price for a new EV was $55,544, compared to $49,270 for a gas-powered vehicle. Alliance for Automotive Innovation, *Get Connected: Electric Vehicle Quarterly Report*, Fourth Quarter 2024 at 7, https://www.autosinnovate.org/GetConnected (last visited March 31, 2025). These tariffs are a setback to the automotive industry generally, with higher import tariffs driving up the cost of EVs and gas-powered vehicles alike, and with average vehicle prices already near $50,000, countless Illinois households may be priced out of the new vehicle market entirely, let alone the new EV market.

If the Board adopts the proposed rule, and USEPA again withdraws California's waivers, the adopted rule would be unenforceable; thereafter, if the waivers are later reinstated, the adopted rule will likely need to be amended before implementation to allow for at least two years

[15] The Rule Proponents state, "Direct investment in EV charging infrastructure from the federal and the state government will also support the EV transition" and "Illinois will receive more than $148 million in federal funding by 2027 to help build a network of public charging stations under the National Electric Vehicle Infrastructure program, part of the Bipartisan Infrastructure Law." Hr. 1, Exh. 1, at 46. The Rule Proponents also claim that "the Illinois Finance Authority obtained an additional $14.9 million for charging station infrastructure through competitive federal funding under the Charging and Fuel Infrastructure program. These tax credits, rebates, and investments will support successful implementation of the ACC II rule." *Id*.

before commencement of the given model year. Given the present risks to continued federal funding and tax credits supporting EV adoption, and the possibility that the second Trump Administration's USEPA will withdraw California's CAA waivers as it did during the first Trump Administration, Illinois EPA recommends that the Board refrain from advancing the rulemaking proposal to First Notice at this time. All these issues should be considered by the Illinois General Assembly.

II. California's Clean Car and Truck Standards Do Not Align with the Board's Authority to Regulate Vehicles that Constitute "Air-Pollution Hazards"

The Board also should decline to advance the proposed rules because the California clean car and truck standards at issue do not align with the Board's rulemaking authority under Section 10 of the Act. 415 ILCS 5/10. Section 10(A)(d) of the Act specifically authorizes the Board to adopt regulations concerning the sale of any vehicle "determined by the Board to constitute an air-pollution hazard." 415 ILCS 5/10(A)(d). In order to adopt the proposed rules, then, the Board should determine that the vehicles regulated by the proposed rules "constitute . . . air-pollution hazard[s]." The Rule Proponents have not made a showing that all the vehicles regulated by the California clean car and truck standards constitute air-pollution hazards, though. And, given that the regulated vehicles include, in particular, PHEVs, such a determination would not be supported by the rulemaking record. Compared to the Act's plain language, then, the California standards are overbroad and should not be advanced by the Board.

In this case, Section 10 of the Act should be interpreted in accordance with the rules of statutory interpretation:

> The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. The language of the statute is the best indication of legislative intent, and we give that language its plain and ordinary meaning. We construe the statute as a whole and cannot view words or phrases in isolation but, rather, must consider them in light of other relevant provisions of the statute.

In re E.B., 231 Ill. 2d 459, 466 (2008) (citations omitted). "We must construe the statute so that each word, clause, and sentence, if possible, is given a reasonable meaning and not rendered superfluous, avoiding an interpretation which would render any portion of the statute meaningless or void." *Sylvester v. Indus. Comm'n (Acme Roofing & Sheet Metal Co.)*, 197 Ill. 2d 225, 232 (2001). In line with that canon, "specific statutory provisions will control over general provisions on the same subject"; otherwise, the specific statutory provision would be nullified and rendered superfluous. *Van Dyke v. White*, 2019 IL 121452, ¶ 55.

The Board's authority to adopt rules concerning air pollution is set forth in Section 10 of the Act, 415 ILCS 5/10. The Board has authority to adopt regulations to fulfill the purposes of Title II of the Act, including rules in six specific categories. 415 ILCS 5/8 and 10(A); R24-17, Order, November 7, 2024, at 5. Among these categories are "[s]tandards and conditions regarding the sale, offer, or use of any fuel, *vehicle*, or other article *determined by the Board to constitute an air-pollution hazard*." 415 ILCS 5/10(A)(d) (emphasis added).

Acknowledging that the six categories of regulations set out in Section 10(A) are not the only kinds of air pollution regulations that the Board may adopt, the specific statutory language in Section 10(A)(d) concerning the Board's authority to regulate the "sale" of "vehicle[s]" still must be given its "plain and ordinary meaning." *In re E.B.*, 231 Ill. 2d 459, 466 (2008); *Van Dyke v. White*, 2019 IL 121452, ¶ 55. Parsing out the language in Section 10(A)(d), therefore, the Board has authority to adopt "[s]tandards and conditions regarding the sale . . . of any . . . vehicle . . . determined by the Board to constitute an air-pollution hazard." 415 ILCS 5/10(A)(d).

The particular California clean car and clean truck standards before the Board exceed the scope of that authority. Unlike the current federal standards, the California standards are *not* simply traditional emission standards setting an acceptable level of pollution from vehicles.

They are automotive technology standards. They require that an escalating percentage of new vehicles sold must be ZEVs—excluding even PHEVs, except to the extent that PHEVs that meet specified range requirements can be credited for up to 20 percent of the required ZEV sales in any given year. *See* Hr. 1, Exh. 14, at 59; 13 CCR 1962.4(e)(1).[16]

As explained by Mr. Douglas on behalf of AAI: "Speaking specifically to plug-in hybrid electric vehicles (PHEVs), the ACC II rules specifically require that no less than 80% of all new vehicles must be BEVs in 2035 MY. Thus, in 2035, no more than 20 percent of new vehicles sold could be PHEVs." Hr. 2, Exh. 7, at 13. PHEVs must meet several specified requirements, though, to satisfy a portion of the ZEV requirement. Specifically, they must meet the following requirements: 1. Certified to full useful life SULEV30 or lower exhaust emission standards; 2. Emissions performance warranty of 15 years or 150,000 miles, whichever occurs first; 3. Specified battery labeling, data standardization, service information, battery warranty, and charging requirements; 4. Minimum certification range value of greater than or equal to 70 miles; and 5. Minimum US06 all-electric range value of greater than or equal to 40 miles. 13 CCR 1962.4(e)(1)(A). Mr. Douglas indicated in the hearing record, however, that from a practical standpoint, no current PHEV meets the above requirements under the proposed rule, so PHEVs cannot currently satisfy any portion of the ZEV requirement. Hr. 2, Exh. 7, at 13. Accordingly, under ACC II, the sales of PHEVs would be limited to the same extent as any other vehicle with an internal combustion engine. Similarly, under ACT, PHEVs are classified as "near-zero

[16] The uniquely broad nature of the current California clean car and truck standards distinguish them from the California standards considered by the Board in its earlier proceeding, *Application of California Motor Vehicle Control Program in Illinois*, R89-17(C). In that proceeding, the Board considered whether to adopt California standards on vehicle emissions of hydrocarbons, carbon monoxide, and nitrogen oxides. R89-17(C), Order, October 11, 1990, at 2. It is reasonable to classify a vehicle that emits excessive amounts of pollution as an "air-pollution hazard." By contrast, it would not be reasonable to classify any vehicle capable of emitting even a small amount of pollution—like a PHEV—as an "air-pollution hazard." *See, e.g.*, 20 ILCS 627/5 and 10 (finding "the adoption and use of [PHEVs] would benefit the State of Illinois by . . . improving the health and environmental quality of the residents of Illinois through reduced pollution.").

emission vehicles" and may account for only up to 50 percent of credits required toward rule compliance in any given year. 13 CCR 1963.3(d).

The Agency does not identify in the record any justification for treating PHEVs as a class of vehicles that constitute an "air-pollution hazard." PHEVs have historically been considered environmentally beneficial. Indeed, the Electric Vehicle Act to this day includes legislative findings that "the adoption and use of [PHEVs] would benefit the State of Illinois by . . . improving the health and environmental quality of the residents of Illinois through reduced pollution." 20 ILCS 627/5 and 10. It is simply not possible to square the Illinois General Assembly's finding in the Electric Vehicle Act that PHEVs improve public health and environmental quality with its authorization in Section 10(A)(d) of the Act for the Board to regulate vehicles that "constitute . . . air-pollution hazard[s]." Indeed, one of the Rule Proponents itself, NRDC, has stated: "NRDC does believe that with sufficient emissions controls in place PHEVs have the potential to improve air quality and to substantially contribute to meeting our long term GHG reduction goals of 80% below 1990 levels by 2050." *See*, the National Resources Defense Council and Electric Power Research Institute report on PHEVs, Environmental Assessment of Plug-In Hybrid Electric Vehicles, Volume 1: Nationwide Greenhouse Gas Emission (Final Report, July 2007)—https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/EPRI-NRDC_PHEV_GHG_report.pdf at 10.

Neither have Rule Proponents attempted to demonstrate that PHEVs—or any other particular class of vehicle, for that matter—"constitute . . . air-pollution hazard[s]," as is required by the plain language of Section 10(A)(d). To the contrary, Rule Proponents have provided

multiple glosses on Section 10(A)(d) that do not align with its actual language. Some examples (emphasis added) include:

- "Promulgating the Proposed Rules thus fits squarely within the Board's express statutory authority to set 'standards and conditions regarding the sale' of 'vehicles' *to address* 'air pollution hazard[s.]' 415 ILCS 5/10(A)(d)." (R24-17, *Rule Proponents' Response in Opposition to Motions to Dismiss*, October 1, 2024, at 1);

- "Fuel Industry Intervenors' Motions should be denied because they ask the Board to ignore its express statutory authority—and responsibility—to regulate 'air-pollution hazards' *from* 'vehicles' for the public benefit." (*Id*. at 5); and

- "Applying the plain meaning of the statute's terms, if the Board determines 'any … vehicle' *creates* an 'air-pollution hazard,'—i.e. creates danger or risks harm through the emission of 'air pollution'—then § 10 gives the Board broad authority to promulgate '[s]tandards and conditions regarding the sale, offer, or use [there]of.' 415 ILCS 5/10(A)(d)." (*Id*. at 10).

Summing up Rule Proponents' arguments, when the Agency directly asked Rule Proponents' witness during the first hearing whether it was their position that "plug-in hybrid vehicles constitute an air pollution hazard, the sale and use of which should be limited by the Board," Rule Proponents' attorney objected to the question and stated, "I would just note on that point, *the emissions from these vehicles are the air pollution hazard, not the vehicle themselves*." Tr. December 2, 2025, Hearing, 169:2-5; 170:12-14 (emphasis added).[17] Under the plain language of Section 10(A)(d), though, it is precisely the vehicle itself that must "constitute an air-pollution hazard." 415 ILCS 5/10(A)(d). The Rule Proponents' interpretation of Section 10(A)(d) is inconsistent with its plain language.

[17] The witness's actual answer to the question was that the proposed rules do not limit the sale of PHEVs, which is inconsistent with the proposed rules. *See* 13 CCR 1962.4(b) (defining ZEVs as "passenger cars and light-duty trucks that produce zero exhaust emissions of any criteria pollutant (or precursor pollutant) or greenhouse gas, excluding emissions from air conditioning systems, under any possible operational modes or conditions"); 1962.4(c)(1)(B) (setting out ZEV sales requirements escalating to 100% by 2035); 1962.4(e) (allowing manufacturers to fulfill a portion of the annual ZEV requirement—specifically, up to 20%—with PHEV sales). The proposed rules inherently limit PHEV sales to increasingly lower percentages of overall annual sales.

It is important for the Board to give effect to Section 10(A)(d)'s plain language, one, because it is the law, and two, because there is a limitation from the Illinois General Assembly implicit within it. Section 10(A)(d) does not authorize the Board to limit the sale of a vehicle (or any other item) just because there might be a less-polluting alternative. Instead, to regulate the sale of a vehicle in Illinois, the Board must determine that the vehicle itself "constitutes an air-pollution hazard." 415 ILCS 5/10(A)(d).

The Agency cannot agree there is sufficient evidence in the record for the Board to determine that PHEVs constitute an "air-pollution hazard" as required by the Act. It may be desirable from a policy standpoint to *prioritize* the adoption of ZEVs over PHEVs—and that, indeed, is a policy choice that the Illinois General Assembly *has* elected to make in Section 45 of the Electric Vehicle Act. 20 ILCS 627/45. But *illegalizing* the sale of PHEVs beyond a certain amount goes far beyond prioritizing the adoption of ZEVs, and farther than the Act allows. For that reason, the Board should defer to the Illinois General Assembly on whether to adopt the California standards and decline to advance the proposed rules to First Notice.

III. Issues with the Rule Proposal

Based upon all the above, the Agency does not support the Board adopting the proposed rule at this time. If the Board moves forward with the rule proposal, however, it should consider the following.

A. Rule Provisions that are Ambiguous/Lack Clarity or have Enforceability Issues

In the event the Board elects to move forward with the Rule Proponents' proposal, the Agency has reviewed the rule language included in the Rule Proponents' filings and notes several areas of concern, specifically related to the vagueness and enforceability of the proposed rules. Rule Proponents themselves appeared unsure regarding implementation of certain aspects

of the regulatory language so there was very little provided at hearing or in post-hearing comments to shed light on some of these provisions. While the Rule Proponents have focused on the proposed rules' intent, the Agency is focused on the implementation of the proposed rules as written, as it will be tasked with such implementation. The Agency does not recommend proceeding to First Notice with the proposed rule language as currently written.

Vague and Ambiguous Provisions

First, Section 242.101(b) of the rule proposal states that Part 242 applies to "all new" vehicles offered for sale or lease, or sold, or leased for registration in Illinois, except as provided for in Section 242.105, Exemptions. This provision is not restricted to vehicles produced and offered for sale or lease by manufacturers in Illinois, and in fact does not reference manufacturers at all. On its face, the Part would apply to all such vehicles offered for sale or lease, or sold, or leased for registration in Illinois, including by automobile dealerships. Further, this Section does not indicate that the proposed Part 242 applies only to model year 2029 and later vehicles. Rule Proponents have indicated that manufacturers are the entities impacted by the rule, with compliance obligations under the rule, and that to the extent there is conflict between this provision and more specific provisions, the specific provisions would control. Hr. 1, Exh. 14, at 22-24. It is still unclear to the Agency though why the "Applicability" section of the rule, which is generally relied upon in assessing applicability, would differ from the substantive rule provisions. The Agency recommends that this Section be reconciled with the other provisions of the rule for clarity prior to First Notice.

Second, in Section 242.102, Definitions, additional terms need to be defined. First, the Agency asked Rule Proponents about the meaning of "off-highway" as used in Section 242.105, Exemptions. *Id*. at 34. Section 242.105 establishes exemptions from the prohibitions set forth in

Section 242.104, including for "A new motor vehicle sold exclusively for off-highway use." Rule Proponents indicate that the term "off-highway" is not generally defined in California's emission standards or in the regulatory enactments of other states that have adopted the California standards, and in the absence of an express regulatory definition, terms used in regulations are given their "ordinary meanings" as appropriate. *Id*. However, the Agency is not aware of a generally accepted ordinary meaning of this term. The Rule Proponents claim that the term "generally refers to use of a vehicle for applications other than use on the roads and highways" such as construction equipment and agricultural equipment. *Id*. However, there are vehicles that have multiple applications, some on highway and some off. "Highway" itself is not even defined, so it is unclear if construction or agricultural equipment would be exempted as they do travel on some roadways. Undefined terms can cause implementation issues, so the Agency recommends that either this term be defined or else replaced with a more specific description of the types of vehicles targeted by the language.[18]

Similarly, "financial assistance program" is defined but the definition does not set forth the guidelines/qualifications for Agency approval in the definition. This term is used in Section 242.123(b)(2), which provides that ZEVs or PHEVs initially leased in Illinois and sold at the end of lease to an Illinois dealership participating in a financial assistance program will earn additional vehicle values that can be used to meet a portion of the manufacturer's annual ZEV requirement. This Section does not establish guidelines or criteria that the Agency must use in assessing the program either. The definition of "financial assistance program" also uses the term "lower-income consumers" which is itself not defined and would need to be for Agency implementation.

[18] The Agency itself has used "off-highway" in Agency regulations, and from experience is aware that implementation issues do indeed arise.

Next, Section 242.104, Prohibition, states, "Subject to an applicable exemption, starting with the 2029 model year and for each model year thereafter, it is unlawful for any *person* to sell or register, offer for sale or lease, deliver, import, purchase, or lease a new motor vehicle unless that new motor vehicle has been certified to California emission standards and meets all other applicable requirements of California Code of Regulations." (emphasis added). Section 242.106(a), Enforcement, provides, "A *person* who violates any provision of this Part shall be subject to civil penalties in accordance with Section 42 of the Environmental Protection Act (415 ILCS 5/42)." (emphasis added). There are also references under Section 242.114, Inspection and Access to Records, to "Any *person* subject to this Subpart B [LEV regulation]." (emphasis added). Under Section 242.102, Definitions, "person" is defined as any individual or entity, including corporations, companies, associations, societies, firms, partnerships, and joint stock companies, political subdivisions of any states, and agencies or instrumentalities thereof. The Rule Proponents state that the rules are not intended to be enforced against or applied to individuals or businesses other than vehicle manufacturers and car dealerships. Hr. 2, Exh. 1, at 19 and 21-23. Right now though, the above provisions clearly and explicitly apply to individuals and entities in addition to vehicle manufacturers and dealerships, making Rule Proponents' intent irrelevant. Either the definition of "person" should be revised consistent with the Rule Proponents' intent, or the use of the word "person" in the provisions should be changed to "vehicle manufacturers," as appropriate.

Finally, regarding compliance flexibilities for manufacturers, as to the environmental justice values, the Agency is not familiar with any "community-based clean mobility programs," as that term is defined in the proposed rule, in Illinois in which new ZEVs and PHEVs through the 2031 model year can be used to satisfy up to 5% of a manufacturer's annual ZEV

requirement. The proposed rule sets forth the environmental justice vehicle values pursuant to 13 CCR 1962.4(e)(2)(A) that provides, in part, that a community-based clean mobility program must be one of the following: (i) An approved grant recipient of the Clean Mobility Options Voucher Pilot Project established pursuant to Health & Safety Code Section 44258.4; (ii) An approved grant recipient of the Sustainable Transportation Equity Project established pursuant to Health & Safety Code Section 44258.4; or (iii) Determined by the Executive Officer to qualify as a community-based clean mobility program pursuant to subsection (e)(2)(A)3.c. 13 CCR 1962.4(e)(2)(A)3.a. The Executive Officer must determine that a program qualifies as a community-based clean mobility program before a manufacturer may earn vehicle values and must determine that the manufacturer has demonstrated that the program meets each element of the definition of "community-based clean mobility program" and has provided all the specified documentation. 13 CCR 1962.4(e)(2)(A)3.b. and 3.c.

While a definition of "community-based clean mobility program" is included in the proposed rule, there are no provisions addressing how a determination is made that such a program qualifies and by whom in Illinois, and it is assumed that there would be no such approved grant recipients under the California Health & Safety Code in Illinois. Previously, in the context of enforcement and a different provision in California's regulations, the Agency asked the Rule Proponents what the Illinois equivalent of an Executive Officer is. The Rule Proponents responded that, for that specific provision, no Illinois Executive Officer in addition to CARB's Executive Officer was needed. Hr. 1, Exh. 14, at 43-44. The Agency is therefore unclear who the Executive Officer would be in the context of community-based clean mobility programs, and it questions how these provisions are to be implemented if the proposed rule is adopted in Illinois. That should be clarified in any rules published for First Notice.

Enforceability

The Agency has additional concerns regarding the enforceability of several of the proposed rule provisions including the fact that no input has been solicited or obtained from SOS, which Rule Proponents indicate would be responsible for implementing the registration prohibitions in the rule. *Id*. at 40.

First, as discussed above, the Rule Proponents do not sufficiently explain how the prohibitions under Section 242.104 will be implemented in Illinois or how their intent regarding the entities that will be subject can be reconciled with the clear, broad language in the rule. As explained above, Section 242.104, Prohibition, provides, "Subject to an applicable exemption, starting with the 2029 model year and for each model year thereafter, it is unlawful for any *person* to sell or register, offer for sale or lease, deliver, import, purchase, or lease a new motor vehicle unless that new motor vehicle has been certified to California emission standards and meets all other applicable requirements of California Code of Regulations." "Person" is defined as "any individual or entity, and shall include and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock companies, and shall also include, without limitation, all political subdivisions of any states, and any agencies or instrumentalities thereof." Proposed 35 Ill. Adm. Code 242.102. While the Rule Proponents state that the proposed rule provisions are intended to apply only to vehicle manufacturers and auto dealers, and not to individuals or businesses other than vehicle manufacturers in Illinois, the proposed rule language clearly applies to all persons, individuals and businesses alike.

Similarly, under Section 242.106(a), penalty provisions in the proposed rule provide, "A person who violates any provision of this Part shall be subject to civil penalties in accordance with Section 42 of the Environmental Protection Act (415 ILCS 5/42)." When asked about

whether individuals and business entities other than vehicle manufacturers would be subject to penalty provisions should the prohibitions in Section 242.104 be violated, the Rule Proponents indicated, "In the exceedingly unlikely event that an individual or business purchased a non-certified new vehicle (which will generally not be available for sale unless manufacturers and dealers violate the standards), they would be denied registration by the Secretary of State, but Rule Proponents' intention is that the penalty provisions of section 242.106(a) and (c) would not be enforced against them." Hr. 2, Exh. 1, at 20.

While the Agency appreciates the Rule Proponents explaining the intent of these provisions, the rule on its face applies much more broadly and would subject individuals and other entities to penalties for violations. If that is not the intent, the rule language itself needs to be revised accordingly. If the language is not changed to revise the definition of "person" or to clarify that only vehicle manufacturers are subject to the prohibition and penalty provisions, the language should clarify that the Agency is not responsible for enforcement of vehicle registration prohibitions. It is not the entity responsible for vehicle registration in the State and has no way to access registration information (including under the rule proposal, which contains no recordkeeping or reporting obligations for persons registering their vehicles).

Rule Proponents indicated that individuals and entities were included in the prohibitions in Section 242.104 because they are intended "to ensure that the proposed rules apply to Illinois rather than California, and that they cannot be easily circumvented." *Id*. But if these prohibitions are not enforceable, they have limited, if any, utility in preventing circumvention.

Next, many of the exemptions under Section 242.105 are not identical to California regulations, and according to the Rule Proponents, "are generally based upon similar provisions included in the regulatory enactments of other states" that have adopted the California standards

or are "consistent with California regulations." Hr. 1, Exh. 14, at 32, and Hr. 2, Exh. 1, at 2-5. It is unclear how such exemptions are to be substantiated especially when there is no express requirement that documentation be provided when such an exemption is applicable. Rule Proponents indicate that SOS can request information as needed, but as mentioned above, the Agency questions whether SOS will agree with Rule Proponents' contention that it is obligated to implement the Board's regulations and that it is able to do so absent its own statutory or regulatory amendments.

If the Board intends to move the proposal forward to First Notice, it should resolve these issues and amend these provisions accordingly. Rule language should be clear about who is subject to the rule and what their obligations are under the rule. It is useful to know the Rule Proponents' intent, but the rule language directly conflicts with that intent in several regards and should be reconciled prior to adoption. Provisions applicable to individuals and entities other than vehicle manufacturers should either be removed or overhauled such that individuals' and other entities' compliance obligations are clear and those obligations are practically enforceable on the face of the rule.

B. Technical Support of Rule Proposal

The Agency has concerns about the validity of the costs and charger quantity predicted under the Rule Proponents' Exhibit 3, ERM, Analysis Update: Illinois Clean Trucks Program (June 2024) ("Exhibit 3"), and Exhibit 4, ERM, Analysis Update: Illinois Advanced Clean Cars II Program (June 2024) ("Exhibit 4"). Hr. 1, Exh. 1, Exhibits 3 and 4. On behalf of the Rule Proponents, Mr. Patel's response to the Agency's question regarding the cost of the Low NOx Rule compared to the federal standards fails to explain how the cost per ton of NOx reductions under the Low NOx Rule from the ERM Analysis "is assumed to be the same as the federal

baseline in this analysis." Tr. December 2, 2024, Hearing, 51:12-15. Mr. Patel defended this statement by stating that CARB and "major original equipment manufacturers of trucking companies" have committed to "align the Low NOx Rule with the federal standards" at some point in the future. *Id*. at 52:7-16. But Rule Proponents state that the federal standards achieve less (i.e., 91.7%) reductions on a per-vehicle basis than would the Low NOx Rule. Hr. 1, Exh. 14, at 10, fn. 4. Outside of this contradiction (if aligning the Low NOx Rule with the federal standards causes the reductions under the Low NOx Rule to decrease, how does this not impact the cost per ton of reduction?), Mr. Patel's response fails to explain how the cost per ton for Low NOx Rule implementation from the original ERM Analysis would not differ after considering the new federal standards compared to the previous federal standards.

Mr. Patel's response to the Agency's question regarding the number and location distribution of chargers expected under the proposal states that the reduction by an approximate factor of 18 in the estimated charger quantity between the Rule Proponents' Exhibit 2, ERM, Illinois Advanced Clean Cars II Program (Sept. 2023) ("Exhibit 2"), Hr. 1, Exh. 1, Exhibit 2, and Exhibit 4 is due to (1) "investments from the Inflation Reduction Act, as well as numerous state investments" in charging infrastructure and (2) "the addition of the federal baseline." Tr. December 2, 2024, Hearing, 53:7-24 and 54:1-15. The Agency interprets this to mean that Exhibit 4 attributes nearly 95% of all the projected charging capacity needed under Exhibit 2 to investments from the Inflation Reduction Act, other numerous state investments, and the federal baseline. This seems to be a very optimistic estimate for the impacts of those considerations. Further, it is unusual that adding those considerations to a rigorous modeling analysis would create a uniform reduction factor of approximately 18 for all classes of chargers considered in the analyses, i.e., the Agency would expect that a rigorous model would not produce such uniform

changes among the four different charger types/capacities given such investments and addition of the federal baseline.

C. Stakeholder Outreach

The extent of stakeholder outreach in Illinois compared to some of the other states that have adopted California's standards is minimal. If the Board moves forward with the rule proposal, the Agency recommends that additional outreach be conducted to ascertain economic impacts, technical feasibility concerns, funding concerns, etc., particularly from the other State government entities that will be impacted by the proposal.

For example, Nevada engaged in extensive stakeholder outreach before the filing of its proposed rule adopting clean car standards (which Nevada did not extend to include ACC II). This stakeholder outreach included webinars, listening sessions, technical sessions, air quality impacts analysis sessions, economic impacts and small business impacts sessions, and stakeholder and public workshops over almost a one-year period.[19] Similarly, Minnesota

[19] On December 8, 2020, the Nevada Department of Environmental Protection ("NDEP") held the Clean Cars Nevada kick-off webinar whereby an introduction to the proposal and the regulatory adoption process were discussed. Thereafter, the NDEP hosted a virtual listening session on January 14, 2021, in which the NDEP provided a brief overview of the regulatory adoption process as well as an opportunity for Nevada residents, stakeholders, and all interested persons with an opportunity to provide public comment, share input, and weigh in on key questions to help shape the proposed regulation. The NDEP held a Clean Cars Nevada technical session regarding the LEV program on February 23, 2021, whereby the NDEP reviewed the general provisions of the LEV program such as vehicle and manufacturer definitions, program exemptions, the vehicle certification process, the approval process for motor vehicle pollution control devices, emission control warranty provisions, and the recall process. The NDEP held a similar Clean Cars Nevada technical session regarding the ZEV program on March 30, 2021. The NDEP held its first Clean Cars Nevada air quality impacts analysis session on April 27, 2021, and a second air quality impacts analysis session on May 27, 2021. On June 15, 2021, the NDEP held a webinar reviewing the economic impacts of ownership and the small business impacts of the ZEV program in Nevada. The NDEP hosted a stakeholder workshop on June 17, 2021. During the workshop, a diverse group of stakeholders presented on the Clean Cars Nevada rulemaking. On July 26, 2021, the NDEP presented and answered questions at a bilingual session that provided the opportunity for the Spanish-speaking community to learn and ask questions about the Clean Cars Nevada Initiative. On July 28, 2021, the NDEP hosted a Clean Cars Nevada Public Workshop both virtually and in person at NDEP's offices in Carson City and Las Vegas to solicit comments on a proposed version of a regulation adopting California's LEV and ZEV standards. The Clean Cars Nevada regulations were added to the Nevada Administrative Code, NAC 445B.780 to 445B.846, by the State Environmental Commission, R093-20A, and filed with the Secretary of State on October 25, 2021.

engaged in widespread stakeholder outreach before adoption of its Clean Cars Minnesota Rule (which also did not include ACC II). It held six public meetings, five technical meetings focused on key technical issues related to the rulemaking, and over 40 stakeholder outreach meetings convening with various interested organizations.[20]

While the Illinois proposal is going through the Board's rulemaking process in compliance with the Illinois Administrative Procedure Act, and while the Agency understands that not every outreach measure utilized in another state is necessarily appropriate or needed here, for a rulemaking of such significant scope and impact, there was relatively limited stakeholder outreach and participation in formulating the rulemaking proposal and in the Board's rulemaking process. Should the Board desire to move forward with the rulemaking, the Agency recommends that additional public and stakeholder outreach be conducted to obtain a more comprehensive understanding of the impact on other entities and the feasibility of rule implementation in Illinois. The Board should specifically solicit input from, at a minimum, SOS,

[20] The MPCA's public and stakeholder participation is set forth in its Statement of Need and Reasonableness, Proposed Revisions to Minnesota Rules, chapter 7023, Adopting Vehicle Greenhouse Gas Emissions Standards, (Clean Cars Minnesota), Revisor ID No. 04626, Environmental Analysis and Outcomes Division, December 2020, and is described as follows. Prior to adoption, on September 25, 2019, the MPCA developed a suite of Clean Cars Minnesota webpages to provide the public with background and other information relevant to the rulemaking. Once the Request for Comments ("RFC") was published on October 7, 2019, the MPCA updated the webpages to include rulemaking documents. The MPCA also developed a web survey for input from persons who could not participate in the meetings. Six public meetings were held on various dates during October and November in 2019 in Fergus Falls, Burnsville, Marshall, Virginia, Minneapolis, and Mankato. The MPCA also offered a webinar version of the meeting, which was the same as that provided at the in-person meetings and participants had the opportunity to ask questions and provide input. The MPCA also held five technical meetings: two during the RFC comment period, a third about two weeks later, a fourth about two weeks after that, and a fifth in the summer of 2020. The technical meetings focused on key technical issues related to the rulemaking and were held in St. Paul and offered as webinars. The webinars were recorded and posted on the Clean Cars Minnesota website. The MPCA also held over 40 stakeholder meetings with organizations associated with the automotive industry and environmental activism, in addition to the many emails, phone conversations, and informal discussions that took place between MPCA staff and individual stakeholders throughout the process of developing the rule. The MPCA also informed the public about the Clean Cars Minnesota rulemaking through outreach to a variety of media outlets including television, radio, newspapers, and online. On July 26, 2021, the MPCA adopted the Clean Cars Minnesota Rule. 46 Minn. Reg. 66.

ICC, MISO, and PJM, inquiring about their positions regarding the proposed rule, the potential issues they foresee, and the steps they may need to take should the rule be adopted.

IV. Conclusion

The State is currently implementing an approach set by the Illinois General Assembly that supports the adoption of EVs in Illinois by reducing the barriers to EV ownership, not by effectively banning the sale and registration of non-ZEVs in the State. Adopting regulations now that force automobile manufacturers to sell exponentially more EVs than are currently being sold, or to reduce the sale of non-ZEVs to comply with the California sales percentages, would represent a significant and impactful departure from such approach and would, in fact, transform the automotive industry in the State.

The impacts of adopting clean car and truck standards are substantial, so deciding whether adoption is advisable and feasible should only be done after careful and methodical consideration. The Illinois General Assembly is the most appropriate venue for this assessment and, if adoption of a clean car and truck program is desired, for the implementation of a comprehensive strategy to do so. The Illinois General Assembly can solicit input from entities that will be impacted by adoption of the standards, including other government organizations such as the SOS and ICC. It can solicit information and expertise regarding economic and grid impact and funding solutions needed to avoid negative consequences to State revenue. It can assess the new landscape under the current federal administration and decide whether the timing for adoption of clean car and truck standards is appropriate. The State of Illinois and the Rule Proponents share the exact same goal: increasing the number of EVs in Illinois so as to reduce transportation pollution. The Illinois General Assembly is the best forum for deciding precisely what policies should be adopted to advance that shared goal.

For this and the other reasons set forth above, the Agency recommends that the Board not move the rule proposal forward to First Notice at this time.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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DATED: April 28, 2025

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following:

I have served the attached MOTION FOR WAIVER OF REQUIREMENTS and POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

by e-mail upon the following persons at the e-mail address of such persons:

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ATTACHED SERVICE LIST

My e-mail address is gina.roccaforte@illinois.gov.

The number of pages in the e-mail transmission is 70.

The e-mail transmission took place before 4:30 p.m. on April 28, 2025.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

/s/ Gina Roccaforte
Gina Roccaforte
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Dated: April 28, 2025

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