

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
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)  
) R2024-017  
)  
) PROPOSED CLEAN CAR AND  
)  
) TRUCK STANDARDS ) (Rulemaking – Air)

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**NOTICE OF FILING**

TO:

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Please take notice that I have today filed with the Illinois Pollution Control Board the following documents: Rule Proponents' Post-Hearing Responses to Questions Posed During the December 2-3, 2024 Hearing Before the Illinois Pollution Control Board; Attachment A: Table of Proposed Rule Sections & Relationship to CARB Regulations; and Certificate of Service, a copy of which is served upon you.

Date: January 13, 2025

Respectfully submitted,



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the standards or provisions promulgated in this proceeding, it may do so under that same authority. Undoing a previous rulemaking is, in itself, a new rulemaking.<sup>4</sup>

Rule Proponents are not aware of any statutory provision that grants IEPA authority to unilaterally repeal or amend a duly-promulgated regulation adopted by the Board. That said, IEPA certainly has authority to propose to the Board the amendment or repeal of a Board-promulgated regulation and could do so in the future as to any rules promulgated in this proceeding.

2. “So perhaps that [scenario in question #1] would require another board rulemaking?” (Transcript, Vol. 1, 171:22–23, IEPA).

**Answer:** Yes, please see above the response to Question 1.

#### Other States

3. “Regarding [IEPA Pre-Filed] Question 21. For each proposed exemption in Section 242.105 that the rule proponents indicate is not identical to California regulations; but, rather, originated in other states, could you please explain the purpose of the exemption and the effect of the exemptions in Illinois?” (Transcript, Vol. 2, 221:19–222:1, IEPA).

**Answer:** Each exemption contained in section 242.105, from subsection (a) to (m), is addressed below.

242.105(a): Exempts used motor vehicles. This provision is substantively identical to California regulations 13 CCR §§ 1956.8(a)(1), 1962.4(b), 1963(b), and 1963(c)(19), all of which are incorporated by reference. These California regulations specify that the California vehicle emission standards being adopted apply to new vehicles, which has the same substantive effect as including an exemption for used vehicles.

242.105(b): Exempts new motor vehicles sold to be wrecked or dismantled. Because vehicles that are wrecked or dismantled will not be operated on Illinois roads, these vehicles will not produce tailpipe emissions. Therefore, applying the Proposed Rules to these vehicles will not reduce emissions. The proposed exemption provides flexibility for certain edge cases where it

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<sup>4</sup> See 5 ILCS 100/5-35 (“Before the adoption, *amendment, or repeal* of any rule, each agency shall accomplish the actions required by Section 5-40, 5-45, or 5-50, whichever is applicable.”) (emphasis added). *Accord* 35 Ill. Adm. Code 101.202, (defining a Board “Rulemaking” or “rulemaking proceeding” as “a proceeding brought under Title VII of the Act or other applicable law to adopt, *amend, or repeal* a regulation.”) (emphasis added).

will not impede successful implementation of the Proposed Rules. The proposed exemption is also consistent with California regulations such as 13 CCR § 1963(c)(19), which defines a regulated “vehicle” as “equipment intended for use on highways,” among other elements. Vehicles sold to be wrecked or dismantled are not “intended for use on highways.”

242.105(c): Exempts new motor vehicles sold for registration out-of-state. Because vehicles that are registered out of state will not be registered in Illinois and will not primarily be operated on Illinois roads, these vehicles will not substantially contribute to tailpipe emissions in Illinois. Therefore, applying the Proposed Rules to these vehicles will not substantially reduce emissions in Illinois, and emissions from these vehicles are best addressed by the states in which these vehicles are registered. The proposed exemption provides flexibility for certain edge cases where it will not impede successful implementation of the Proposed Rules.

242.105(d): Exempts new motor vehicles sold exclusively for off-highway use. The Proposed Rules address emissions from on-highway vehicles, and other California regulations address off-highway vehicles. Therefore, applying the Proposed Rules to vehicles sold exclusively for off-highway use will not advance the purposes of the Proposed Rules. The proposed exemption provides flexibility for certain edge cases where it will not impede successful implementation of the Proposed Rules. The proposed exemption is also consistent with California regulations such as 13 CCR § 1963(c)(19), which defines a regulated “vehicle” as “equipment intended for use on highways,” among other elements. Vehicles sold exclusively for off-highway use are not “intended for use on highways.”

242.105(e): Exempts certain new motor vehicles acquired out of state to replace a vehicle that was damaged or became inoperative or was stolen while the owner was out of state. Because this exemption is expected to apply in a small number of cases and does not affect the manufacturers who are the primary entities regulated by the Proposed Rules, it will provide flexibility for certain edge cases without impeding successful implementation of the Proposed Rules.

242.105(f): Exempts new motor vehicles transferred by inheritance. Because this exemption is expected to apply in a small number of cases and does not affect the manufacturers who are the primary entities regulated by the Proposed Rules, it will provide flexibility for certain edge cases without impeding successful implementation of the Proposed Rules.

242.105(g): Exempts new motor vehicles transferred by court decree. Because this exemption is expected to apply in a small number of cases and does not affect the manufacturers who are the primary entities regulated by the Proposed Rules, it will provide flexibility for certain edge cases without impeding successful implementation of the Proposed Rules.

242.105(h): Exempts new motor vehicles sold after the Proposed Rules' effective date if the vehicle was registered in Illinois before the effective date. This exemption ensures that compliance with the Proposed Rules will not be affected by vehicles in inventory that have been registered by dealers or other entities in Illinois before the Proposed Rules' effective date. The proposed exemption provides flexibility for a limited number of edge cases without impeding successful implementation of the Proposed Rules.

242.105(i): Exempts certain new motor vehicles originally registered in another state by a resident of that state who subsequently establishes residence in Illinois. This ensures the Proposed Rules will not impede out-of-state residents who recently purchased new vehicles from moving to Illinois. Because this exemption is expected to apply in a small number of cases and does not affect the manufacturers who are the primary entities regulated by the Proposed Rules, it will provide flexibility for certain edge cases without impeding successful implementation of the proposed rules.

242.105(j): Exempts certain rental vehicles that are rented out of state. This reflects the interstate nature of many rental agencies' operations. Because this exemption is expected to apply in a small number of cases and does not affect the manufacturers who are the primary entities regulated by the Proposed Rules, it will provide flexibility for certain edge cases without impeding successful implementation of the Proposed Rules.

242.105(k): Exempts certain mass transit vehicles. This exemption is substantially similar to California regulations 13 CCR §§ 1956.8(a)(2)(F) and 1963(c)(11), which are both incorporated by reference. These California regulations exempt certain buses from applicable California emission standards, due in part to availability concerns with compliant transit buses.<sup>5</sup> Other states adopting versions of the Proposed Rules have included language providing for transit bus exemptions like what is proposed here, in part because the structure of California's diesel bus exemption relies on conditions specific to other California regulations that the other states did not adopt, and that Rule Proponents do not propose adopting in Illinois.<sup>6</sup>

242.105(l): Exempts authorized emergency vehicles. This ensures that the Proposed Rules will not impede emergency operations, for example if there are availability issues with compliant emergency vehicles. Because this exemption is expected to apply in a small number of cases, it

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<sup>5</sup> See Vermont Agency of Natural Resources, *Technical Support Document: Proposed Amendments to Vermont Low Emission Vehicle and Zero Emission Vehicle Rules* at 4–5 (June 3, 2024), [https://dec.vermont.gov/sites/dec/files/aqc/laws-regs/documents/Final\\_Proposed\\_Rule\\_Technical\\_Support\\_Document\\_LEV\\_2023.pdf](https://dec.vermont.gov/sites/dec/files/aqc/laws-regs/documents/Final_Proposed_Rule_Technical_Support_Document_LEV_2023.pdf).

<sup>6</sup> See, e.g., *id.* at 5. See also *infra* at 7 n. 16 (describing guidance to section 177 state program administrators regarding use of “more stream-lined” exemption for transit buses).

will provide flexibility for certain edge cases without impeding successful implementation of the Proposed Rules.<sup>7</sup>

242.105(m): Exempts military vehicles. This exemption is substantively identical to California regulation 13 CCR § 1905, which is not incorporated by reference but which exempts military tactical vehicles and equipment from 13 CCR Division 3, Chapter 1, including California's vehicle emission standards. Because this exemption is expected to apply in a small number of cases, it will provide flexibility for certain edge cases without impeding successful implementation of the Proposed Rules.

4. "Well, there were a number of exemptions, and it was indicated that [*sic*] had come from other states, and we were just wanting to know what the purpose of these exemptions were. But that could be addressed in the post-hearing comments. If the Board opts to move forward with this rule, but without the provisions in Subpart A that are based on other states' programs and that are not identical to California's regulations, which exemptions set forth in Section 242.105 would still be relevant to Part 242?" (Transcript, Vol. 2, 222:15–223:2, IEPA).

**Answer:** As explained above in the answer to question 3, the exemptions contained in subsections (a), (b), (d), (k), and (m) of section 242.105 are substantially identical, similar to, or consistent with California regulations, although the California regulations incorporated by reference may not contain express statements of the exemptions. The Board should adopt these exemptions to ensure that the Proposed Rules can be implemented consistently with the California rules that they are based upon, not all of which can be directly adopted verbatim by Illinois as a matter of practical drafting and integration with each state's broader regulations.

Exemptions (c), (e), (f), (g), (h), (i), (j), and (l) in section 242.105 do not explicitly appear in the California regulations incorporated by reference, although they may appear elsewhere in California regulations or statute, and, in any event, simply clarify the scope and applicability of the Proposed Rules to new motor vehicles sold for use in Illinois during the covered model years consistent with California's regulations. The Board should adopt these exemptions, which are based on exemptions adopted by other Section 177 states, in order to facilitate smooth implementation of the Proposed Rules and to provide clarity concerning unique situations where application of the Proposed Rules would be outside their intended scope (for example, where a vehicle is inherited, transferred by court order, or replaced due to an out-of-state accident) and other edge cases that might otherwise present questions as to the rules' applicability. Rule

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<sup>7</sup> See *infra* at 7 n. 16 (describing guidance to section 177 state program administrators regarding emergency vehicle exemption).

Proponents are not aware of any legal challenges to the similar exemptions that have been incorporated by other Section 177 states.

5. “Mr. Weinstock, in your opening statement, you addressed the issue of identity of these proposed rules to the CARB regulations. And you noted that while the proposed standards are identical to CARB rules, the proponents have made certain changes to tailor the rules to fit the Illinois Air Pollution framework. Can you please specifically identify any proposed substantive standards of provisions that deviate from CARB rules in your proposal?” (Transcript, Vol. 2, 336:14–24, Board Staff Dr. Anand Rao).

**Answer:** There are no “substantive standards” in the Proposed Rules that “deviate” from the relevant California Air Resources Board (“CARB”) “standards.” All California “standards” are incorporated by reference directly in the Proposed Rules. Those provisions in the Proposed Rules that are not incorporated from CARB by reference are all outside the well-established specific definition of “standards” to which the Section 177 “identity” requirement applies. The term “standards” has a specific meaning in the context of Section 177, which has been consistently interpreted by various federal courts of appeals and the U.S. Supreme Court.<sup>8</sup>

As stated above in response to question 4, the Clean Air Act’s identity requirement applies only to the Proposed Rules’ “standards,” i.e., the specific pollution emission limits and annual ZEV delivery requirements contained in the ACC II, Low NO<sub>x</sub>, and ACT rules.<sup>9</sup> As required by the Clean Air Act, the standards included in the Proposed Rules are identical to the standards that have been adopted by California, thus satisfying the identity requirement of Section 177. Indeed, to accomplish this without any uncertainty, the Proposed Rules incorporate the California standards by reference in proposed section 242.103, in addition to describing or identifying the standards in other provisions of the Proposed Rules.<sup>10</sup>

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<sup>8</sup> See, e.g., *Engine Mfrs. Ass’n v. South Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 253 (2004) (interpreting “standards” in to encompass pollution limits on vehicles or engines, “pollution control device[s],” or “other design feature[s] related to the control of emissions”); *Am. Auto. Mfrs. Ass’n v. Cahill*, 152 F.3d 196, 200 (2d Cir. 1998) (distinguishing between “standards relating to the control of emissions” that are “intended to lower the level of auto emissions” and “enforcement mechanisms” that “describe regulatory devices intended to ensure that the ‘standards’ are effective”); *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. N.Y. State Dep’t of Env’t Conservation*, 79 F.3d 1298, 1305 (2d Cir. 1996) (finding that while Section 177 “requires states to adopt standards identical to those in place in California to avoid preemption, there is no such identity requirement for the mechanism employed to enforce those standards”); *Motor & Equip. Mfrs. Ass’n, Inc. v. EPA*, 627 F.2d 1095, 1113–14 (D.C. Cir. 1979) (recognizing that “standards” identify “a quantitative level to be attained by the use of techniques, controls, and technology,” while enforcement mechanisms are “criteria designed to determine compliance with applicable standards” (internal quotations omitted)).

<sup>9</sup> *Cahill*, 152 F.3d at 200. See also *Motor Vehicle Mfrs. Ass’n of U.S., Inc.*, 79 F.3d at 1305 (Although section 177 “requires states to adopt standards identical to those in place in California to avoid preemption, there is no such identity requirement for the mechanism employed to enforce those standards”).

<sup>10</sup> See Proposed Rule Section 242.103 (Incorporations by Reference).

The Proposed Rules also contain accompanying enforcement mechanisms, which are distinct from the standards themselves and which are not subject to the Clean Air Act's identity requirement.<sup>11</sup> Many of the proposed enforcement mechanisms are incorporated from or based upon CARB regulations, but some have been modified or added to facilitate effective enforcement of the standards in Illinois. Generally, the changes and additions support basic operation of the standards in Illinois rather than in California. Representative examples include specifying applicability of the standards in Illinois, using the Illinois Environmental Protection Act's civil penalty provisions rather than California's, and including Illinois state agencies and officials in the definitions section.

Courts have long recognized a distinction between emission "standards"—which must be identical in all section 177 states—and "enforcement mechanisms," which are not subject to an identity requirement.<sup>12</sup> The U.S. Supreme Court has interpreted the phrase "emission standard" in the Clean Air Act's mobile source provisions to refer to requirements that a "vehicle or engine must not emit more than a certain amount of a given pollutant, must be equipped with a certain type of pollution-control device, or must have some other design feature related to the control of emissions."<sup>13</sup> By contrast, "enforcement mechanisms" are generally recognized as "regulatory devices intended to ensure that the 'standards' are effective," like testing, maintenance and enforcement procedures."<sup>14</sup> These elements are not subject to section 177's identity requirement.<sup>15</sup> As a result, there is longstanding practice among section 177 states of deploying state-specific enforcement procedures and compliance flexibilities that facilitate effective enforcement of the standards within their jurisdictions.<sup>16</sup> Rule Proponents provide the table attached as Attachment A hereto to describe each section of the Proposed Rules in these terms.

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<sup>11</sup> See *supra* n. 9.

<sup>12</sup> See, e.g., *Int'l Auto. Mfrs. v. Comm'r*, 208 F.3d 1, 7 (1st Cir. 2000); *Cahill*, 152 F.3d at 199–200; *Motor & Equip. Mfrs. Ass'n, Inc.*, at 1111–14.

<sup>13</sup> *Engine Mfrs. Ass'n*, 541 U.S. at 253.

<sup>14</sup> *Cahill*, 152 F.3d at 200. See also *Motor Vehicle Mfrs. Ass'n of U.S., Inc.*, 79 F.3d at 1305 (Although section 177 "requires states to adopt standards identical to those in place in California to avoid preemption, there is no such identity requirement for the mechanism employed to enforce those standards").

<sup>15</sup> *Id.*

<sup>16</sup> See, e.g., Northeast States for Coordinated Air Use Management (NESCAUM), *Heavy-Duty Low NOx Omnibus Regulation: Frequently Asked Questions* at 2, n.3 (Sept. 23, 2024) (describing how section 177 states have adopted "similar or more stream-lined exemptions for diesel-fueled transit buses," compared to California), [https://www.nescaum.org/documents/HD-Low-NOx-Omnibus-FAQ\\_website-version\\_clean\\_09-23-24.pdf](https://www.nescaum.org/documents/HD-Low-NOx-Omnibus-FAQ_website-version_clean_09-23-24.pdf); NESCAUM, *Advanced Clean Trucks Regulation Frequently Asked Questions* at 2, 4 (Sept. 17, 2024) (explaining that "[s]ome states have opted to modify or not to implement" the ACT rule's large entity reporting requirement, and that because the rules early action credit provision is voluntary, "Section 177 states may modify this provision when adopting the ACT regulation"), [https://www.nescaum.org/documents/ACT-FAQ\\_website-version\\_clean\\_FINAL\\_09-17-24.pdf](https://www.nescaum.org/documents/ACT-FAQ_website-version_clean_FINAL_09-17-24.pdf); NESCAUM, *Advanced Clean Cars II Frequently Asked Questions* at 2 (noting that although there is no mention of an emergency vehicle exemption in the ZEV regulation, emergency vehicle exemptions are addressed elsewhere in California law and "[g]enerally speaking, Section 177 states also exempt emergency vehicles"), [https://www.nescaum.org/documents/ACC-II-ZEV-FAQs\\_08-29-24.pdf](https://www.nescaum.org/documents/ACC-II-ZEV-FAQs_08-29-24.pdf).

The Proposed Rules incorporate the relevant California emission “standards,” i.e., the quantitative limits on vehicles’ emission levels and the ZEV sales requirements, in identical form to the standards in place in California for the covered model years. For example, section 242.110 requires Illinois vehicles to be “certified to the applicable standards” set forth in the CARB rules incorporated by reference, and section 242.140 requires regulated manufacturers to “comply with the ZEV sales requirements” set forth in the CARB rules incorporated by reference.<sup>17</sup>

The provisions of the Proposed Rules that may differ from California rules are accompanying enforcement mechanisms. For example, section 242.101(b) provides that the standards apply “throughout the State of Illinois,” rather than in California. Section 242.106 provides for enforcement of the standards pursuant to the Illinois Environmental Protection Act’s civil penalties provisions, and section 242.114 provides for inspections and vehicle testing “for the purposes of determining compliance with and enforcing” the standards. Many of the accompanying enforcement mechanisms in the Proposed Rules are similar or identical to procedures in the CARB regulations. The relevant issue is not whether the text of these provisions is a word-for-word, cut-and-paste of the CARB regulations, but whether any modifications would alter the Proposed Rules’ “standards” within the meaning of the Clean Air Act’s identity requirement. Because every provision of the Proposed Rules that meets the applicable definition of a California “standard” is incorporated by reference, as explained above, the text of the Proposed Rules is fully consistent with the Clean Air Act’s identity requirement.

6. “And also, comment on whether these deviations are approved by U.S. EPA as meeting Section 177 of the Clean Air Act.” (Transcript, Vol. 2, 337:1–3, Board Staff Dr. Anand Rao).

**Answer:** While U.S. EPA must approve preemption waivers for California to enforce its vehicle emission standards under section 209 of the Clean Air Act,<sup>18</sup> U.S. EPA has no role regarding other states’ exercise of their Clean Air Act section 177 authority to adopt California’s standards or to enforce those standards once a waiver has been issued to California. Section 177 provides that any state with plans in place to meet national ambient air quality standards “may adopt and enforce ... standards relating to control of emissions from new motor vehicles or new motor vehicle engines,” so long as those standards are identical to California’s for the relevant model year(s); section 177 does not create or contemplate any role for U.S. EPA to review or approve of that exercise of authority. Accordingly, U.S. EPA’s webpage states that “[s]tates are not required to seek EPA approval under the terms of section 177.”<sup>19</sup>

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<sup>17</sup> See *Cahill*, 152 F.3d at 200 (holding ZEV sales requirements to be emission standards).

<sup>18</sup> See 42 U.S.C. § 7543(b).

<sup>19</sup> U.S. EPA, *Vehicle Emissions California Waivers and Authorizations*, <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>.

Because U.S. EPA has no role in reviewing states' exercise of their section 177 authority, it does not need to review the text of states' regulations adopting California's standards or the accompanying enforcement mechanisms. As explained in response to question 5 above, the Proposed Rules here are fully consistent with the Clean Air Act's identity requirement. The enforcement mechanisms included in the Proposed Rules define the Proposed Rules' operation, administration and enforcement in Illinois and do not alter the Proposed Rules' "standards."

7. "And the second question deals with the statement of reasons on page 14, notes that 14 states have adopted the ACC II rule; 11 states have adopted the ACC rule; and 10 states have adopted the Low NOx Omnibus rule. Please clarify whether CARB rules adopted by these states include deviations similar to what's been proposed in this proceeding."  
(Transcript, Vol. 2, 337:4–11, Board Staff Dr. Anand Rao).

**Answer:** Yes, the rules adopted by these other states include provisions that tailor the rules to their respective states and provide for accompanying enforcement mechanisms intended to support effective administration of the rules. The rules adopted by other states can be accessed through a database maintained by Sierra Club.<sup>20</sup> While the specific adjustments and enforcement provisions vary somewhat from state to state, they are generally similar to those included in the Proposed Rules at issue here.

Because Illinois has not previously adopted California vehicle emission standards, Rule Proponents prepared rule text that clarifies for the Board and stakeholders the California standards being adopted and how they will be applied in Illinois, rather than relying more heavily on incorporations of California code by reference. This approach is similar to the rule text adopted in states like Colorado, which adopted California standards for the first time relatively recently in 2019. For further discussion of how other states' rules informed various provisions of the Proposed Rules, see Rule Proponents' Answers to IEPA Pre-Filed Questions 15(a), 17(a), 18, 20(a), 20(f), 21(a), 26, 29, 32, 33, 34, 35, 36, 38, 39, 45, 46(b), and 49.

8. "Has U.S. EPA approved any of these rules adopted by other states?" (Transcript, Vol. 2, 337:12–13, Board Staff Dr. Anand Rao)

**Answer:** No. As described in the response to Question 6 above, Section 177 of the Clean Air Act does not establish or contemplate any role for U.S. EPA in approving adoption of

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<sup>20</sup> Sierra Club, *Clean Vehicle Programs: State Tracker*, <https://www.sierraclub.org/transportation/clean-vehicle-programs-state-tracker>.

California's standards by other states. U.S. EPA's role is limited to reviewing and approving California's requests for waivers of preemption to enforce its standards.

Rule Proponents note that following the December 2, and 3, 2024 hearing in this proceeding, the U.S. EPA granted waivers under Clean Air Act Section 209 for the remaining California standards that Rule Proponents have proposed for adoption in Illinois.<sup>21</sup>

9. "If not, please provide the status of CARB rules adopted by other states mentioned in the statement of reasons." (Transcript, Vol. 2, 337:14–16, Board Staff Dr. Anand Rao).

**Answer:** Each of these states' rules adopting the ACC II, ACT, and Low NOx regulations remain a duly-enacted regulation pursuant to each state's legislative and/or rulemaking processes, and their status has not changed since Rule Proponents filed the Statement of Reasons in June 2024.<sup>22</sup> However, as noted in the response to Question 8 above, now that U.S. EPA has granted waivers for all of the underlying California standards, Section 177 of the Clean Air Act now authorizes the states that have adopted these standards to begin enforcing the standards for the covered model years.

#### Fuel Tax Revenues

10. "Would the Rule Proponents be willing to conduct an analysis of these topics [the impact to fuel tax revenues in Illinois from adopting ACC II, ACT, and the Low NOx rules] if requested by the Board and provide it for all participants' review?" (Transcript, Vol. 1, 59:15–17, IEPA and Board).

**Answer:** The Proposed Rules only concern the sale of *new* vehicles, which comprise only a small part of Illinois' total on-road vehicle fleet in a given year. And the ZEV requirements of the ACC II and ACT rules—which phase-in over time—apply to only a percent of those annual new vehicle sales. By contrast, fuel tax revenues are derived from Illinois' *entire* on-road vehicle fleet. As a result, projecting fuel tax revenues requires an analysis that focuses primarily on vehicles not impacted by the Proposed Rules. It also involves the necessarily difficult task of foretelling when the General Assembly may act to address the topic, their policy choices (of which there are a wide range of options), and the impact of those policies, and predicting such

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<sup>21</sup> See 90 Fed. Reg. 642 (Jan. 6, 2025) (granting California's petition for a waiver of preemption for Advanced Clean Cars II); 90 Fed. Reg. 643 (Jan. 6, 2025) (granting California's petition for a waiver of preemption for the Low NOx rule).

<sup>22</sup> For information on the status of states that have adopted California vehicle emission standards and states with rulemakings to adopt the standards underway, see Sierra Club, *States Adopting Clean Cars and Trucks Rules*, <https://www.sierraclub.org/transportation/clean-vehicle-programs-state-tracker>.

legislative action and other policy changes over the extended time horizon during which this issue will come into focus and the General Assembly may act. For these reasons, Rule Proponents' assessment of the Proposed Rules' costs and benefits described in the Statement of Reasons—which Rule Proponents presented as a complete analysis as to the Proposed Rules and which tracks the assessments undertaken by other states that have adopted the ACC II, Low NOx, and ACT rules—focuses on the direct impacts of the Proposed Rules.

Nevertheless, Rule Proponents are willing to continue to engage on this topic, provided it will not delay these proceedings. The Illinois Department of Transportation (“IDOT”) has prepared a study—which was referenced at the hearing<sup>23</sup>—projecting that Illinois fuel tax revenues will, at baseline, fail to keep up with infrastructure needs by as much as \$36 billion dollars by 2050 based on industry projections of market trends and irrespective of state policy changes that reduce reliance on fossil fuels.<sup>24</sup>

Rule Proponents have requested that IDOT provide the underlying studies and data referenced in the memorandum, through the Illinois Freedom of Information Act,<sup>25</sup> and Rule Proponents will provide that information to the Board if made available from IDOT. Rule Proponents are also working with ERM, the consulting firm that prepared the analysis of the Proposed Rules' cost and benefit impacts provided with the Statement of Reasons, and, if feasible as a matter of timing and cost, will undertake a review of the IDOT study to assess its assumptions and underlying data (pending receipt of that information) and make it available for the Board's review in advance of the March hearing dates.

Secretary of State's Office

11. “In response to [IEPA Pre-Filed] Question 20(F), as in Frank, rule proponents indicate that the proposed rule, quote: *Simply adds one item to the set of items that must be supplied to the Secretary of State in order to register a vehicle*, end quote [italics added]. Also in response to question 37, rule proponents indicate that the Secretary of State is authorized by Illinois statute to request certain information in an application for registration. Is it rule proponents' contention to require that individuals and businesses provide to SOS, Secretary of State, proof that a vehicle meets California regulations when registering the vehicle?” (Transcript, Vol. 2, 213:14–214:4, IEPA).

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<sup>23</sup> Transcript, Vol. 1, at 62–63.

<sup>24</sup> Illinois Department of Transportation (IDOT), “Memorandum on Illinois Sources of Transportation Funding,” (Jan. 2024), [https://idot.illinois.gov/content/dam/soi/en/web/idot/documents/transportation-system/planning/blue-ribbon-commission/IDOT\\_Transportation\\_Funding\\_Background\\_FINAL.pdf](https://idot.illinois.gov/content/dam/soi/en/web/idot/documents/transportation-system/planning/blue-ribbon-commission/IDOT_Transportation_Funding_Background_FINAL.pdf).

<sup>25</sup> 5 ILCS 140/6.

**Answer:** No additional vehicle registration 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.

The New York Department of Motor Vehicles, which is responsible for registering vehicles in that state, provides a helpful explanation of the role of Manufacturers' Certificates of Origin in this process, available at <https://dmv.ny.gov/inspections/california-emissions-standards>.

Among other information, this New York DMV website explains that:

To determine if a vehicle meets the California emissions standard, look for these words or similar language on the Manufacturer's Certificate of Origin (MCO) and the emissions label under the hood:

"California-Only Vehicle: This vehicle conforms to U.S. EPA and California regulations applicable to (the vehicle model year) model-year new motor vehicles introduced into commerce only for sale in California."

"50-State Vehicle: This vehicle conforms to U.S. EPA and California regulations applicable to (the vehicle model year) model-year new motor vehicles."

Existing statutes already require the Secretary of State to register vehicles only after determining the vehicle can be legally registered. Per 625 ILCS 5/2-110, "[t]he Secretary of State shall examine and determine the . . . legality of every application for registration of a vehicle . . . and shall reject any such application if not satisfied of the genuineness, regularity or legality thereof . . ." (emphasis added). To do so, 625 ILCS 5/3-405(a)(4) authorizes the Secretary of State to request in an application for registration of a motor vehicle such information "as may reasonably be required by the Secretary to enable him to determine whether the vehicle is lawfully entitled to registration and the owner entitled to a certificate of title."<sup>26</sup>

Under current Illinois law, an application for a certificate of title (which is required to register a vehicle pursuant to 625 ILCS 5/3-101(c)) for a "new vehicle" "must be accompanied by the Manufacturer's Statement of Origin."<sup>27</sup> The Secretary of State is already required by statute to deny registration if an applicant does not provide sufficient information required to demonstrate

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<sup>26</sup> *Hartney Fuel Oil Co. v. Hamer*, 998 N.E.2d 1227, 1238 (Ill. 2013) ("Administrative regulations have the force and effect of law...").

<sup>27</sup> 625 ILCS 5/3-104(d).

compliance with the state's laws.<sup>28</sup> In the event that a Manufacturer's Statement of Origin<sup>29</sup> does not include emissions label language, reference may be made to the "Vehicle Emissions Control Information" label, which is located on the vehicle's engine compartment, for purposes of completing the registration process.<sup>30</sup>

12. "If so, please identify the provision in the proposed rule that specifies this requirement." (Transcript, Vol. 2, 214:5-6, IEPA).

**Answer:** See answer to preceding question 11.

13. "And also, please explain how individuals and business entities would be notified of any such requirement when registering a vehicle with SOS and how the Board could ensure such notification takes place." (Transcript, Vol. 2, 214:7-11, IEPA).

**Answer:** As discussed in the answer to question 11 above, the Proposed Rules would not require purchasers to take any additional steps in the registration process. However, the Secretary of State could inform the public about updates to the registration process through its helpful webpage, available at [https://www.ilsos.gov/departments/vehicles/title\\_and\\_registration/home.html](https://www.ilsos.gov/departments/vehicles/title_and_registration/home.html), which contains forms and resources to assist Illinoisans in the vehicle registration process. As model year 2029 approaches, the Secretary of State's Office could provide useful information in the form of a FAQ about how to register new vehicles starting with model year 2029, any relevant forms, and details on how dealerships and manufacturers can provide that information to the Secretary of State's Office on behalf of the purchaser directly at the time of sale. For examples of such helpful websites from analogous state officials in other states that have adopted California emissions standards, please see the New York and Washington state websites referenced in footnote 30 to the answer to question 11 above.

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<sup>28</sup> 635 ILCS 5/3-408(a)(1).

<sup>29</sup> A Manufacturer's Statement of Origin is sometimes referred to as a "Certificate of Origin." *See* American Association of Motor Vehicle Administrators, "Manufacturers' Certificate of Origin," <https://www.aamva.org/topics/manufacturers-certificate-of-origin#/?wst=d5a5f5751f7474b62a5bb2b374692b61> ("Manufacturer's Certificate of Origin (MCO) or Manufacturer's Statement of Origin (MSO) refers to the original ownership document for a vehicle.") Indeed, the relevant Illinois statutes use the term "certificate of origin" to refer to the same type of document. *See, e.g.*, 625 ILCS 5/3-100 (holder of the "certificate of origin" meets definition of "Owner"); 625 ILCS 5/3-102 (excluding from certificate of title requirement vehicles owned by manufacturer or dealer "provided a dealer reassignment area is still available on the manufacturer's certificate of origin").

<sup>30</sup> *See, e.g.* New York Department of Motor Vehicles, "California Emissions Standards," <https://dmv.ny.gov/inspections/california-emissions-standards>; Washington State Department of Licensing, "Clean Car Law emission requirements: Vehicle dealers," <https://dol.wa.gov/professional-licenses/vehicle-dealers/clean-car-law-emission-requirements-vehicle-dealers>.

14. “Is it rule proponents’ contention that the proposed rule will obligate the Secretary of State to require proof that a vehicle meets California regulations before allowing a registration?” (Transcript, Vol. 2, 218:23–219:3, IEPA).

**Answer:** Yes. Please refer to the previous answer to question 11 above.

Again, under Illinois statute, the Secretary of State is presently obligated to examine applications for vehicle registration and reject applications where the registration of the vehicle would conflict with Illinois laws.<sup>31</sup>

Here, through the adoption of ACC II, the Board would be exercising its clear statutory authority to establish a legal regulation with the same force and effect as statutory law by adopting the California standards.<sup>32</sup> 415 ILCS 5/10(A)(d) gives the Board the authority to set the “[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.”

15. “If so, please identify the provision and the proposed rule that rule proponents believe specifies this obligation, and identify the statutory authority you believe exists for the Secretary of State to refuse registration to vehicles that do not comply with California emission standards.” (Transcript, Vol. 2, 219:4–10, IEPA).

**Answer:** Again, please see the previous answer to questions 11 and 14 above and see 625 ILCS 5/2-110, which obligates the Secretary of State to reject registration applications that do not comply with all state laws.

16. “If not, please explain how the registration prohibition in Section 242.104 will be enforced if the Secretary of State declines to require proof of compliance.” (Transcript, Vol. 2, 219:11–14, IEPA).

**Answer:** Not applicable; please see answers to previous questions.

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<sup>31</sup> See 625 ILCS 5/2-110 (“The Secretary of State shall examine and determine the . . . legality of every application for registration of a vehicle . . . and shall reject any such application if not satisfied of the . . . legality thereof . . .”) (emphasis added).

<sup>32</sup> *Hartney Fuel Oil Co.*, 998 N.E.2d at 1238 (“Administrative regulations have the force and effect of law...”).

17. “Is it rule proponents’ contention that the Board has the authority to impose obligations on the Illinois Secretary of State’s office?” (Transcript, Vol. 2, 219:17–19, IEPA).

**Answer:** Please see answers to previous questions. In short, the Board has authority to issue regulations, regulations have the force of law, and the General Assembly has imposed the obligation on the Secretary of State to issue registrations only to vehicles that comply with state laws.

18. “If so, please explain the reasoning and identify any applicable legal authority.” (Transcript, Vol. 2, 219:20–21, IEPA).

**Answer:** See responses to previous questions.

19. “Has the Secretary of State’s office been notified of this rulemaking?” (Transcript, Vol. 2, 219:23–24, IEPA).

**Answer:** Yes, the Secretary of State’s Office has been notified of the rulemaking proceeding.

20. “If this is addressed in post-hearing comments, could you also set forth if any discussions have taken place during the stakeholder outreach?” (Transcript, Vol. 2, 220:2–5, IEPA).

**Answer:** See Rule Proponents’ Response to IEPA Pre-Filed Question 20(c), which states:

Rule Proponents have conducted outreach to electric vehicle manufacturers like Lion and Rivian to discuss the rulemaking at the Pollution Control Board. Rule Proponents have conducted outreach to multiple trade associations and industry groups that represent certain manufacturers, charging infrastructure builders and operators, and logistics companies. This includes the Electrification Coalition, Advanced Energy United, CALSTART, Ceres, and Environmental Entrepreneurs (E2). Those individuals and entities were notified of the rulemaking and encouraged to provide public comment, but we cannot speak to the decisions of those entities or individuals to provide comment or testimony in this process. It should be noted that many of the groups listed above have previously expressed public support for Illinois (or other states broadly) adopting the Advanced Clean Trucks and Low NO<sub>x</sub> rules.

Additionally, it should be noted that a subset of Rule Proponent groups (including the Natural Resources Defense Council, Respiratory Health Association, and Little Village Environmental Justice Organization) met briefly in the spring of 2024 with the Illinois Trucking Association, ABATE of Illinois, the Illinois Farm Bureau, Chambers of Commerce, Illinois Manufacturers Association, Illinois Automobile Dealers, and others to discuss the standards.

Rule Proponents expect this rulemaking proceeding to offer a forum for interested stakeholders to provide input on the proposed rules.<sup>33</sup>

21. “And can you please identify any other Board regulations that establish standards for [sic] Secretary of State’s office regarding registration of vehicles in Illinois?” (Transcript, Vol. 2, 220:10–13, IEPA).

**Answer:** No, but, again, the Proposed Rules will not require the Secretary of State to do anything it does not already do under its existing statutory obligations and authorities. The Proposed Rules establish standards applicable to the vehicles themselves, not for the registration of vehicles. If the Board promulgates the Proposed Rules, the list of exemptions in proposed section 242.105 would excuse vehicles that fit within a particular exemption from the state-law requirement to meet the emissions standards. The Secretary of State’s standard for registration would still be whether the registrant has demonstrated compliance with state law, as described in answers to other questions above. 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. Please see above, in response to question 3, for a description of those proposed exemptions.

As a threshold matter, though, it is important to note that the Secretary of State would never even be confronted with vehicles that fit within many of those exemptions to the Proposed Rules. For example, the Secretary of State does not register military vehicles (proposed exemption in section 242.105(m); excluded from Illinois registration requirement under 625 ILCS 5/3-402(A)(6)); new vehicles “sold to be wrecked or dismantled,” or sold “exclusively for off-highway use” (proposed exemptions in section 242.105(b) and (d); excluded from Illinois registration requirement under the 625 ILCS 5/3-402(A) limitation to vehicles “driven or moved upon a highway”). And, of course, the Secretary of State will not be asked to register new vehicles “sold for registration out-of-state” (proposed exemption in section 242.105(c)).

To the extent that a person does seek to register a vehicle that is not compliant with the vehicle emissions standards included in the Proposed Rules and wishes to invoke one of the exemptions

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<sup>33</sup> Rule Proponents’ Answers to Pre-Filed Questions at 29–30. *See also* Rule Proponents’ Response to IADA Pre-Filed Question 48. *Id.* at 67.

in section 242.105, existing state statute already requires that person to include with their application whatever information is necessary to demonstrate the applicability of that exemption as such information would constitute “[s]uch further information as may reasonably be required by the Secretary to enable him to determine whether the vehicle is lawfully entitled to registration . . . .”<sup>34</sup>

**22.** “In response to [IEPA Pre-Filed] Question 21(D) regarding how the Illinois EPA would ever learn of the applicability of an exemption to a particular vehicle transaction, rule proponents indicate that, quote: *Individuals and entities subject to this part may present evidence that a transaction falls under one of these exemptions to IEPA and other state agencies to demonstrate that the transaction is not subject to a requirement or provision of this part. For example, an individual or entity seeking to register a vehicle that falls under one of these exemptions could present evidence that the exemption applies when submitting registration materials to the Secretary of State*, end quote [italics added]. Please identify any rule provision that requires that individuals and business entities provide evidence to the Illinois EPA or SOS to demonstrate that a transaction falls under an exemption.” (Transcript, Vol. 2, 223:20–224:16, IEPA).

**Answer:** Please see the answers above that describe the Secretary of State’s obligation to refuse registration of vehicles that do not comply with state law and the existing statutory requirement that registration applicants provide the Secretary of State with information sufficient to demonstrate compliance with state laws.<sup>35</sup>

The Secretary of State is empowered by existing state law to request information, and is further required to make use of furnished information to ensure that registered vehicles are compliant with the law.

**23.** “Please identify the statutory authority you believe Secretary of State has to determine whether an exemption applies in issuing or refusing registration.” (Transcript, Vol. 2, 224:19–22, IEPA).

**Answer:** Please see above responses to questions 11, 14, 15.

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<sup>34</sup> 625 ILCS 5/3-405(a)(4).

<sup>35</sup> 625 ILCS 5/2-110; 625 5/3-405(a)(4).

24. “Is it rule proponents’ intent that the Secretary of State implement the exemptions in terms of vehicle registration, that Illinois EPA implements them, or that both entities implement them?” (Transcript, Vol. 2, 227:7–11, IEPA).

**Answer:** The Secretary of State’s Office is responsible for vehicle registrations in Illinois. Please see above responses to questions 11 and 21.

25. “If the agency does not control which vehicles are registered by the Secretary of State, could you explain the utility of an individual or business entity presenting evidence to the agency that an exemption applies to the registration prohibition?” (Transcript, Vol. 2, 227:14–19, IEPA).

**Answer:** The Proposed Rules would not require an individual or business entity to present evidence to IEPA that an exemption applies to a new vehicle for which registration is sought. Rule Proponents agree there is no apparent utility or need for individuals to present evidence that an exemption applies to IEPA. It appears that some confusion may have been introduced by Rule Proponent’s initial effort to address the narrow text of IEPA’s pre-filed question. Rule Proponents’ Pre-Filed Answer to IEPA’s Pre-Filed Question 21(D) referenced that owners “may” present evidence to IEPA that an exemption applies because IEPA asked “[h]ow... Illinois EPA will ascertain that a transaction took place and assess whether it falls under one of these exceptions.” A simpler answer would have been: there is simply no need for IEPA to ascertain that a transaction took place or assess whether it falls under an exemption. Thus, there is no need for anyone to present such evidence to IEPA.

Again, if Illinois were to adopt ACC II, beginning with vehicles in model year 2029, with certain exemptions listed in the rules, the Secretary of State’s Office would only register new vehicles that are certified to California standards. As explained above in response to question 3, the exemptions provide common sense flexibility in uncommon situations that will not undermine the benefits of the rule. The Secretary of State’s Office may require the owner of a vehicle to provide the Secretary of State’s Office with proof that a particular exemption applies before registering the vehicle.

26. “And what if the Illinois EPA and the Secretary of State have a different interpretation of an exemption, or of the documentation needed?” (Transcript, Vol. 2, 227:22–24, IEPA).

**Answer:** It will be up to the Secretary of State’s Office, in the course of exercising its existing statutory authority to ensure registration applications comply with state laws, and through its

existing registration application documentation requirements, to determine whether a particular exemption applies to vehicle registration.

### Enforcement

27. “So based on your response describing the situation in California, is the intent that the prohibition in Section 242.104 apply identically for individuals and business entities obligated to comply with the provisions of this section?” (Transcript, Vol. 2, 206:2–7, IEPA).

**Answer:** As described in Rule Proponents’ Statement of Reasons and in Answers to Pre-Filed Questions, the reporting and emissions limits of the Proposed Rules apply only to vehicle manufacturers and auto dealers, not to individuals or businesses other than vehicle manufacturers and dealerships. Rule Proponents’ intent is that the prohibitions in section 242.104 would only be enforced against vehicle manufacturers and dealerships, not against individuals or businesses who in good faith purchase a non-compliant vehicle, which the Secretary of State would not register.

As set out in Rule Proponents’ Statement of Reasons,<sup>36</sup> the Proposed Rules in practice impose requirements on vehicle manufacturers rather than individuals or businesses in Illinois:

The ACC II rule applies to the sale of new light-duty vehicles and imposes obligations on vehicle manufacturers—not consumers. It sets pollution standards for conventional vehicles and establishes manufacturer sales requirements for ZEVs, which include plug-in hybrids and battery electric vehicles. The ACC II rule’s ZEV sales requirements increase each year and culminate in a 100% new ZEV sales requirement beginning in MY 2035 and for all subsequent model years—the timeline needed to meet Governor Pritzker’s 2050 net-zero commitment.

The ACT and Low NOx rules work in tandem to reduce pollution from medium- and heavy-duty (M/HD) vehicles. Like ACC II, these rules establish obligations on vehicle manufacturers rather than on Illinois consumers. The Low NOx rule tightens standards for smog-forming pollutants emitted by new M/HD combustion engines. The ACT rule further reduces harmful pollutants—particularly greenhouse gases—by setting annual sales requirements for zero-emission and near zero-emission M/HD vehicles.<sup>37</sup>

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<sup>36</sup> Statement of Reasons at 11.

<sup>37</sup> *Id.*

As stated in Rule Proponents' Answers to Pre-Filed Questions Not Addressed to Specific Witnesses (IEPA Question 20(a)):

Pre-Filed Answer: As noted in the response to the Agency's questions regarding Section 242.101, the proposed rules include provisions that apply to activities like sales and registrations of new vehicles in Illinois, which may not be expressly covered by California regulations, in order to ensure that the proposed rules apply to Illinois rather than California, and that they cannot be easily circumvented. However, manufacturers remain the entities that have compliance obligations under the proposed rules. For example, Section 242.104 prevents vehicles that have not been certified to California emission standards from being registered in Illinois, but it does not place any compliance obligation for certifying vehicles to the California standards on persons other than vehicle manufacturers, who are subject to the credit retirement requirements in the incorporated California regulations. Other states that have adopted the ACC II, ACT, and Low NOx rules have included similar provisions to achieve these purposes. A separate USEPA waiver is not required to prohibit any person from selling, registering, offering for sale or lease, delivering, importing, purchasing, or leasing a new motor vehicle that is not certified to the California emission standards. The waiver requirement only applies to the emission standards themselves, and not the mechanisms by which those standards are enforced.<sup>38</sup>

28. "Are individuals and business entities, other than vehicle manufacturers who violate the provisions in Section 242.104, subject to potential enforcement and penalties under the current language in Section 242.106 (A) and (C)?" (Transcript, Vol. 2, 206:14–19, IEPA).

**Answer:** The Proposed Rules require vehicle manufacturers to meet the emission standards set forth in the rule and only distribute for sale in Illinois vehicles certified as meeting California standards. Dealers that sell a new non-certified vehicle would be subject to enforcement. 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.

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<sup>38</sup> Rule Proponents' Responses to Pre-Filed Questions Not Addressed to Specific Witnesses at 29.

If the Secretary of State's Office inadvertently registers a new vehicle that has not been certified to the California standards, it is not Rule Proponents' intent that any individual or business would be penalized or fined for a registration error made by the Secretary of State's Office.

As witness Tom Cackette stated at the Chicago hearing, he is not aware of a single example of an individual or business being fined or prosecuted for purchasing a non-compliant vehicle:

Question: "Are there any instances that you're aware of, of an individual or an individual business being prosecuted or fined or held liable in some way for failing to comply with the ZEV sales percentages?"

Answer: "Not with the ZEV sales percentage."<sup>39</sup>

29. "And Section 242.106 indicates that a person who violates any provision of this part shall be subject to civil penalties. So would that include individuals and business entities other than the vehicle manufacturers?" (Transcript, Vol. 2, 208:6–12, IEPA).

**Answer:** The enforcement provisions in 242.106(a) and (c) are designed, principally, to ensure that manufacturers and dealerships are held accountable for complying with the prohibition on selling and leasing new vehicles, defined in section 242.102 as a vehicle with less than 7,500 miles, that do not comply with applicable CARB standards. Were an individual to deliberately exploit the rules, by, for example, by acting as a dealership and selling new, non-California-certified vehicles in Illinois, then in that unlikely scenario, yes, the provisions would apply and allow for IEPA enforcement applying its underlying enforcement discretion to consider the specific facts of such a case. The exemptions in section 242.105 provide additional flexibility and clarify that the Proposed Rules will not apply to individuals and businesses in certain edge cases.

Section 242.106(b)'s provisions relate to submission of "required reports, tests, data, inspection data, or other information required in this Part."<sup>40</sup> Because individuals and businesses (other than a vehicle manufacturer or dealer) have no reporting, inspection data, or testing obligations under the rules, section 242.106 would not apply to them. Under the Proposed Rules, individuals and businesses other than manufacturers and dealers have no obligations whatsoever beyond registering a new vehicle with the Secretary of State's Office, which is already a requirement in Illinois.<sup>41</sup>

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<sup>39</sup> Transcript, Vol. 2 at 302–303.

<sup>40</sup> See Rule Proponents' Answers to Pre-Filed Questions, Attach. 1, at 177 (Clean Version of the Rules).

<sup>41</sup> See Illinois Secretary of State's Office, Title and Registration FAQ, [https://www.ilsos.gov/departments/vehicles/title\\_and\\_registration/faq.htm](https://www.ilsos.gov/departments/vehicles/title_and_registration/faq.htm) ("Anything that is driven (cars, trucks, RV's, motorcycles, mopeds,

**30.** “Is it the rule proponents’ intent that the Illinois EPA would enforce the prohibitions in Section 242.104 against individuals and business entities other than vehicle manufacturers?” (Transcript, Vol. 2, 212:13–17, IEPA).

**Answer:** No. As articulated above in response to questions 28-29, Rule Proponents do not intend for IEPA or any other entity to enforce the prohibitions against individuals and businesses other than vehicle manufacturers and new car dealers. If the State adopts ACC II, as proposed, the Secretary of State’s Office will simply reject registration applications for vehicles that are not compliant with the standards in the Proposed Rules beginning with model year 2029.

Rule Proponents would anticipate that IEPA would use its enforcement discretion to decline to enforce against innocent auto purchasers who somehow inadvertently register a non-compliant vehicle despite the Secretary of State’s process. If an individual or business entity is intentionally violating the rules and somehow tricking the Secretary of State to successfully register non-compliant vehicles, then enforcement could be appropriate.

**31.** “In response to [IEPA Pre-Filed] Question 20(E), as in Edward, rule proponents indicate that the proposed rules do not prohibit the purchase of a non-compliant vehicle in another state. Where in Section 242.104 does it indicate that the prohibitions are restricted to activities in Illinois?” (Transcript, Vol. 2, 213:5–11, IEPA).

**Answer:** In section 242.101, entitled “Purpose and Applicability,” subsection (c) states, “[t]he provisions of this Part apply throughout the State of Illinois.”

The Proposed Rules would be located at Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter II: Pollution Control Board, Part 242: Illinois Clean Car and Truck Standards. Thus, everything within Part 242 is limited to actions taken “throughout the State of Illinois.” As explained below, the Proposed Rules would prohibit Illinois registration of a non-compliant vehicle purchased out of state.<sup>42</sup>

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motorized bicycles) or anything that is pulled (RT's, pop-ups, 5th wheels, trailers of all kinds and sizes) on the roads is titled and licensed.”)

<sup>42</sup> See responses to questions 27–28.

32. “In response to [IEPA Pre-Filed] Question 20(G) regarding how Illinois EPA could ever enforce the prohibitions in Section 242.104, rule proponents state, quote: *IEPA will not necessarily need to focus on learning about particular transactions subject to this section in determining compliance at the point of individual transactions. Instead, this provision is intended to help provide a mechanism for preventing registration of non-compliant vehicles in Illinois, should IEPA determine that, for example, a manufacturer's [sic] failing to meet its obligations to certify vehicles to the California emission standards*, end quote [italics added]. Rule proponents also identify recordkeeping and reporting obligations of vehicle manufacturers and information that may be provided to the Secretary of State’s office as potential sources of information for the agency. Is it rule proponents’ contention that the prohibitions in Section 242.104 are practically enforceable by the Illinois EPA against individuals and business entities other than vehicle manufacturers with no recordkeeping and recording obligations for such individuals and business entities?” (Transcript, Vol. 2, 220:15–221:17, IEPA).

**Answer:** No. As indicated above in response to questions 27-28, Rule Proponents do not intend for IEPA or any other entity to take enforcement action against individuals or businesses purchasing a new vehicle under the Proposed Rules.

33. “So say a resident of Chicago were to find a good deal on a new ICE vehicle, say in theory, in Indiana. If these proposed rules were adopted, that resident could no longer register that vehicle in Illinois; is that correct?” (Transcript, Vol. 2, 331:18-23, Alliance for Automotive Innovation) . . . “A: Hang on just a minute. I’m rereading the question again. I was assuming that you meant after 2035. So I’m also – Q: That is correct.” (Transcript, Vol. 2, 332:8–12).

**Answer:** Assuming that the State adopts ACC II, and, as confirmed by counsel for the Alliance for Automotive Innovation, the question refers to the Indiana purchase of a new light-duty internal combustion engine (“ICE”) vehicle that is model year 2035 or later, then that is correct: the individual would not be able to register the vehicle in Illinois. For used vehicles purchased in other states (or in Illinois, for that matter), there would be no prohibition on registration. For vehicle model years 2029–2034, (when the ACC II rule would first apply in Illinois but before the ZEV sales requirement reaches 100% for new light-duty vehicles), the individual would be able to register the vehicle assuming it was certified to California ACC II emissions standards, which encompass more than just the ZEV sales percentage requirements. For example, section 242.110, requires compliance with ACC II’s low emission vehicle (“LEV”) standards that impose limits on tailpipe emissions of criteria pollutants, set out at Rule Proponents’ Answers to Pre-Filed Questions, page 177. Again, certification with those California emissions standards is

typically indicated on the Manufacturer's Certificate of Origin that auto dealers provide as part of the standard process of transferring title and registration and is marked on the vehicle itself.

Existing Illinois statute requires that vehicles purchased out of state must be properly registered with the Secretary of State.<sup>43</sup> Please see previous answers that address the Secretary of State's existing obligation to register only those vehicles that comply with state laws and regulations.

34. "So skipping to the last question, don't you think that's a policy question that should be better left to the elected representatives of the people of Illinois?" (Transcript, Vol. 2, 332:19–22, Alliance for Automotive Innovation).

**Answer:** No. In rejecting the Motions to Dismiss filed by the Indiana, Illinois, Iowa Foundation for Fair Contracting ("IIFFC") and the Illinois Fuel & Retail Association ("IFRA"), the Board found that the General Assembly has already determined that air pollution from motor vehicles poses a serious problem in Illinois and that the General Assembly has delegated the Board authority to address it in the specific ways proposed here:

Section 8 of the Act provides in its entirety that: [t]he General Assembly finds that pollution of the air of this State constitutes a menace to public health and welfare, creates public nuisances, adds to cleaning costs, accelerates the deterioration of materials, adversely affects agriculture, business, industry, recreation, climate, and visibility, depresses property values, and offends the senses. It is the purpose of this Title to restore, maintain, and enhance the purity of the air of this State in order to protect health, welfare, property, and the quality of life and to assure that no air contaminants are discharged into the atmosphere without being given the degree of treatment or control necessary to prevent pollution. 415 ILCS 5/8 (2022).

...

Section 10 of the Act, Regulations, provides that: [t]he Board, pursuant to procedures prescribed in Title VII of this Act, may adopt regulations to promote the purposes of this Title. Without limiting the generality of this authority, such regulations may among other things prescribe: ... (d) Standards 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) (2022).<sup>44</sup>

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<sup>43</sup> 625 ILCS 5/3-402 (C) ("A resident of this State who purchases a vehicle in another state and transports the vehicle to Illinois shall apply for registration and certificate of title as soon as practicable, but in no event more than 45 days after the purchase of the vehicle.")

<sup>44</sup> Illinois Pollution Control Board, No. 24-17, Order, at 2–3 (Nov. 7, 2024).

**Attachment A: Table of Proposed Rule Sections & Relationship to CARB Regulations**

<b>Section Number and Title</b>	<b>Section Purpose and Relationship to CARB Regulations Incorporated by Reference in the Proposed Rules</b>
<b>Subpart A: General</b>	
242.101 Applicability	Enforcement mechanism establishing rules' applicability to new vehicle sales in Illinois. Substantially identical to CARB regulations incorporated by reference.
242.102 Definitions	Enforcement mechanism specifying definitions used throughout the rules to apply standards and enforcement procedures in Illinois. Substantially identical to definitions and abbreviations used in CARB regulations with certain added definitions specific to Illinois (e.g., defining "Agency" to mean the "Illinois Environmental Protection Agency.>").
242.103 Incorporations by Reference	Incorporates CARB regulations by reference, including emission standards and accompanying enforcement procedures. Explains that for purposes of incorporated sections, "California" means "Illinois," "CARB" or "Air Resources Board" means "Illinois Environmental Protection Agency" and "Director" means "Director" of the Illinois Environmental Protection Agency.
242.104 Prohibition	Enforcement mechanism prohibiting the sale or registration in Illinois of vehicles that are not certified to the standards set in the Proposed Rules. Substantially identical to enforcement and penalty sections in CARB regulations incorporated by reference.
242.105 Exemptions	Enforcement mechanism providing for certain exemptions that are substantially identical or consistent with CARB regulations incorporated by reference.
242.106 Enforcement	Enforcement mechanism providing for civil penalties for violations of the Proposed Rules. Modeled on enforcement sections in CARB regulations incorporated by reference.
242.107 Severability	Enforcement mechanism relating to administration of the Proposed Rules. Substantially identical to severability provision in CARB regulations incorporated by reference.
242.108 Effective Date	Enforcement mechanism specifying effective date of the Proposed Rules.

<b>Subpart B: Low Emission Vehicle Regulation</b>	
242.110 Requirement	Requires manufacturers to certify covered vehicles to emission standards specified in CARB regulations for model years 2029 and beyond.
242.111 Fleet Average Emissions	Requires manufacturers to meet fleet average emission standards for greenhouse gases and pollutants specified in CARB regulations incorporated by reference.
242.112 Certification Testing	Enforcement mechanism for certification and testing. Requires use of testing process and determinations specified in CARB regulations incorporated by reference.
242.113 Reporting Requirements	Enforcement mechanism for reporting. Requires use of reporting process specified in CARB regulations incorporated by reference.
242.114 Inspection and Access to Records.	Enforcement mechanism for inspection and access to records.
242.115 Fleet Average Enforcement	Enforcement mechanism requiring reports documenting noncompliance with the standards.
242.116 Warranty Requirements	Requires manufacturers to provide warranty defect coverage specified in CARB regulations incorporated by reference.
242.117 Recall Requirements	Requires manufacturers to follow recall procedures specified in CARB regulations incorporated by reference.
242.118 Environmental Performance Labels	Requires manufacturers to affix emissions and performance labels to vehicles as specified in CARB regulations incorporated by reference.
<b>Subpart C: Zero Emission Vehicle Regulation</b>	
242.120 Applicability	Specifies manufacturers must comply with ZEV requirements specified in CARB regulations incorporated by reference for covered vehicles in model years 2029 and beyond in Illinois.
242.121 ZEV standard	Requires manufacturers to certify covered vehicles delivered in Illinois pursuant to CARB regulations incorporated by reference.
242.122 Annual ZEV Requirements	Requires manufacturers to comply with annual ZEV delivery requirements specified in CARB regulations incorporated by reference for model years 2029 and beyond in Illinois.
242.123 ZEV Credit Generation	Incorporates ZEV credit generation provisions of CARB regulations incorporated by reference, and enforcement procedures to tailor Environmental Justice Vehicle Value and Early Compliance Vehicle Value provisions so that they can be effectively implemented in Illinois.

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242.124 ZEV Credit Bank	Incorporates ZEV credit accounting provisions of CARB regulations incorporated by reference, with enforcement procedures providing for accounting of ZEV credits earned for vehicles delivered in Illinois
242.125 ZEV Reporting Requirements	Requires manufacturers to comply with reporting requirements specified in CARB regulations incorporated by reference.
242.126 Requirement to Make Up a ZEV Deficit	(a) and (b) Require manufacturers to comply with compliance and credit deficit procedures specified in CARB regulations incorporated by reference; and (c) establishes enforcement procedure for civil penalty under Illinois law that is modeled on penalty provisions in CARB regulations incorporated by reference.
<b>Subpart D: Heavy-Duty Low NO<sub>x</sub> Regulation</b>	
242.130 Requirement	Requires manufacturers to certify covered vehicles to emission standards specified in CARB regulations incorporated by reference for model years 2029 and beyond in Illinois.
242.131 Recalls	Requires manufacturers to follow recall procedures specified in CARB regulations incorporated by reference.
242.132 Inspections and Information Requests	Enforcement mechanism for inspection and access to records.
<b>Subpart E: Advanced Clean Trucks Regulation</b>	
242.140 Requirement	Requires manufacturers to comply with ZEV requirements specified in CARB regulations incorporated by reference for model years 2029 and beyond in Illinois.
242.141 Deficit Generation	Requires manufacturers to comply with deficit generation procedure specified in CARB regulations incorporated by reference for covered vehicles sold in Illinois.
242.142 Credit Generation, Banking, and Trading	Requires manufacturers to comply with credit generation, banking, and trading procedures incorporated by reference specified in CARB regulations for covered vehicles sold in Illinois.
242.143 Compliance Determinations	Specifies compliance determinations shall be made pursuant to CARB regulations incorporated by reference.
242.144 Reporting and Recordkeeping	Requires manufacturers to comply with reporting and recordkeeping procedures specified in CARB regulations incorporated by reference.
242.145 Enforcement	(a) Specifies that manufacturers are subject to enforcement provisions set forth in CARB regulations incorporated by reference; and (b) provides enforcement procedure for civil penalties under Illinois law

	<p>that is modeled on penalty provisions in CARB regulations incorporated by reference.</p>
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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
)  
)  
) R2024-017  
)  
) PROPOSED CLEAN CAR AND  
)  
) TRUCK STANDARDS ) (Rulemaking – Air)

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**CERTIFICATE OF SERVICE**

I, the undersigned, on affirmation state the following:

That I have served the attached Notice of Filing; Rule Proponents' Post-Hearing Responses to Questions Posed During the December 2–3, 2024 Hearing Before the Illinois Pollution Control Board; Attachment A: Table of Proposed Rule Sections & Relationship to CARB Regulations; and Certificate of Service, by e-mail upon the following individuals listed at the e-mail addresses indicated:

TO:

Don Brown Clerk of the Board Illinois Pollution Control Board 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 <a href="mailto:don.brown@illinois.gov">don.brown@illinois.gov</a>	Vanessa Horton & Carlie Leoni Hearing Officers Illinois Pollution Control Board 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 <a href="mailto:Vanessa.Horton@Illinois.gov">Vanessa.Horton@Illinois.gov</a> <a href="mailto:Carlie.Leoni@Illinois.Gov">Carlie.Leoni@Illinois.Gov</a>
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That my e-mail address is [robert.weinstock@law.northwestern.edu](mailto:robert.weinstock@law.northwestern.edu).

That the number of pages in the e-mail transmission is 32.

That the e-mail transmission took place before 5:00 p.m. on the date of January 13, 2025.

Date: January 13, 2025

Respectfully submitted,



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