



**American
Fuel & Petrochemical
Manufacturers**

1800 M Street, NW
Suite 900 North
Washington, DC
20036

202.457.0480 office
202.457.0486 fax
afpm.org

April 28, 2025

Vanessa Horton, Hearing Officer
Illinois Pollution Control Board
60 E. Van Buren St., Ste. 630
Chicago, Illinois 60605

Re: *In the Matter of: Proposed Clean Car and Truck Standards:
Proposed Section 35 Ill. Admin. Code 242, Case # R2024-
017*

Dear Illinois Pollution Control Board:

The American Fuel & Petrochemical Manufacturers (AFPM) appreciates the opportunity to comment on the Illinois Pollution Control Board's (IPCB) rulemaking proposing to adopt in Illinois three sets of California emissions regulations: the Advanced Clean Cars II (ACC II), the Advanced Clean Trucks (ACT), the Low NO_x Heavy-Duty Omnibus Regulation (HD Omnibus NO_x) rules, (collectively the Proposed Regulations).

AFPM is a national trade association representing nearly all of the U.S. refining and petrochemical manufacturing capacity. AFPM members support more than three million quality jobs, contribute to our economic and national security, and enable the production of thousands of vital products used by families and businesses throughout the U.S. AFPM's members are heavily investing in technologies and processes that will continue reducing the carbon intensity of fuels, while automakers continue making improvements to the fuel efficiency of internal combustion engines. Importantly, these investments achieve carbon intensity reductions for new and existing vehicles without relying on a lengthy automobile fleet turnover. Reducing the carbon intensity of transportation while meeting consumer needs will require diverse technologies, including liquid transportation fuels and electric vehicles. Innovation and competition among technologies will deliver better environmental and consumer results.

IPCB should withdraw the Proposed Regulations because they are designed to address the global problem of climate change, and there is no evidence that the Proposed Regulations are "needed" to address compelling and extraordinary conditions in Illinois. Moreover, the Proposed Regulations are inconsistent with Section 202(a) of the Clean Air Act (CAA). While Congress granted a limited CAA preemption waiver to regulate motor vehicles, it did not authorize EPA to waive Energy Policy and Conservation Act (EPCA) preemption. Moreover, Congress did not give states a blank check to regulate heavy-duty motor vehicle emissions. Instead, Congress required states to demonstrate they needed their own emissions standards to address local, not national and international, compelling

and extraordinary conditions.¹ Also, ACCII and the ACT interfere with the CAA's Renewable Fuel Standards.²

The Proposed Regulations have significant legal and analytical infirmities currently being challenged in the United States Court of Appeals for the District of Columbia Circuit. IPCB should not compound the proliferation of illegal regulations by adopting these requirements. At a minimum, IPCB should wait until the D.C. Circuit issues its decision before finalizing the Proposed Regulations. Moreover, these regulations are inconsistent with other provisions of the CAA. They would stifle innovation and reduce competition by ignoring the fundamental importance of liquid fuels in delivering affordable, reliable energy. For these reasons, IPCB should withdraw its proposal.

I. The Proposed Regulations are Preempted by Federal Law.

A. The Proposed Rule Violates CAA Section 209(b)(1)(C).

CAA Section 209(b)(1)(C) provides that a preemption waiver is not available if any one of the following factors is met:

- (A) The Proposed Regulations are not consistent with CAA Section 202(a),
- (B) IPCB's determination that the Proposed Regulations are at least as protective as the applicable Federal standard is arbitrary and capricious, or
- (C) Illinois does not need the Proposed Regulations to "meet compelling and extraordinary conditions."³

The Proposed Regulations are inconsistent with Clean Air Act Section 202(a). The ACC II and the ACT regulations are EV mandates, pure and simple. ACC II applies to new passenger cars, trucks, and SUVs, forcing manufacturers in Illinois to produce and deliver for sale an increasing percentage of zero-emission vehicles (ZEVs)⁴ from 2026, reaching 100% ZEV new vehicle sales by 2035. ACT, which applies to vehicles in weight Classes 2b through 8, forces manufacturers to produce and deliver for sale in Illinois an increasing percentage of ZEVs and near-zero emission vehicles (NZEVs),⁵ imposes mandatory increases in ZEV sales, reaching 40%, 55%, and 75% (depending on the type of vehicle)

¹ 42 U.S.C. § 7543(b)(1)(B).

² *Id.* at § 7545(o).

³ *Id.* at § 7543(b)(1).

⁴ The term "zero emissions vehicle" (ZEV) is a misnomer. ZEVs are not actually "zero" emission when accounting for the vehicle lifecycle, including GHG and criteria pollutant emissions associated with electricity generation required for charging certain ZEVs and production of the ZEV vehicle and battery. We recognize that California uses "ZEV" to refer only to those vehicles with a specific meaning under California's ACC I program, but for ease of review, "ZEVs" is used throughout these comments and encompasses all of the EV technologies, including plug-in hybrid electric vehicles (PHEVs) and battery electric vehicles (BEVs).

⁵ A NZEV is defined as either: (1) An on-road plug-in hybrid electric vehicle which has the same definition as that in 40 CFR section 86.1803-01, amended on July 1, 2011, incorporated by reference therein, that achieves all-electric range as defined in section 1963(c)(1); or (2) An on-road hybrid electric vehicle that has the capability to charge the battery from an off-vehicle conductive or inductive electric source and achieves all-electric range as defined in section 1963(c)(1).

by model year 2035.⁶ IPCB proposes adopting ACC II and ACT, but they are preempted from doing so.

1. Illinois cannot mandate electric vehicles under CAA Section 202(a).

Mandating a shift in the nation's vehicle fleet from internal combustion engines to electric vehicles is a major question that requires "clear congressional authorization."⁷ However, CAA Section 202(a) does not grant states authority to mandate electric vehicles, let alone reflect the "clear congressional authorization" required under *West Virginia*.

Section 202(a)(1) authorizes EPA to prescribe "standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [its] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."⁸ The CAA clearly authorizes EPA to set standards for the "emission" of an air pollutant, demonstrating congressional intent that standards apply to vehicles that actually "emi[t]" the relevant pollutant. According to California, EVs do not.⁹ Thus, ACC II and ACT regulations do not address pollutants that "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."¹⁰

Section 202(a)'s requirement that emissions standards apply to pollutant-emitting vehicles applies to heavy-duty vehicles. Section 202(a)(3)(A)(i) provides that "regulations under [Section 202(a)(1)]" for certain criteria pollutant emissions from "heavy-duty vehicles or engines ... shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology" that is economically feasible.¹¹ Congress required EPA to impose "*technology-based* standards for hazardous emissions."¹² The statutory requirement to compel a technology-based emission standard presumes that the vehicles are *capable* of emitting pollutants.

2. EPA cannot approve a waiver for standards that exceed EPA's authority under Section 202(a).

If promulgated, the ACC II and ACT regulations would be unlawful because they are inconsistent with Section 202(a).¹³ The plain text of Section 209(b)(1)(C) prohibits granting a waiver for a California and Illinois standard that EPA itself could not promulgate under Section 202(a). Because an electric-vehicle mandate promulgated by EPA would exceed

⁶ CARB, "Clean Air Act § 209(b) Waiver Request Support Document," Dec. 20, 2021, at Table III-1: ACT Manufacturer ZEV Sales Requirements.

⁷ *West Virginia v. EPA*, 597 U.S. 697, 777 (2022).

⁸ 42 U.S.C. § 7521(a)(1).

⁹ 13 C.C.R. § 1963(21) ("[A zero-emission vehicle] ... produces zero exhaust emission of any criteria pollutant (or precursor pollutant) or greenhouse gas under any possible operational modes or conditions.").

¹⁰ 42 U.S.C. § 7521(a)(1).

¹¹ 42 U.S.C. § 7521(a)(3)(A)(i).

¹² *West Virginia*, 142 S. Ct. at 2600 (quoting *Alaska Dep't of Env'tl. Conservation v. EPA*, 540 U.S. 461, 485 n.12 (2004)).

¹³ 42 U.S.C. § 7543(b)(1)(C).

its authority under Section 202(a), such a mandate promulgated by IPCB is “not consistent with” Section 202(a).

3. IPCB fails to consider whether ACC II is preempted by federal law.

IPCB must consider whether the measures called for in the California ACC II rule conflict with or are otherwise preempted by the statutory mandates of federal legislation such as the Energy Policy and Conservation Act (EPCA); the federal Clean Air Act (CAA), including the Renewable Fuel Standard (RFS) program; and the Energy Independence and Security Act (EISA).

EPCA expressly preempts states from adopting regulations “related to” fuel economy standards, and ACC II falls squarely within that preemptive footprint. Congress did not authorize the National Highway Traffic Safety Administration (NHTSA) or the Environmental Protection Agency (EPA) to waive this express preemption.

ACC II is also expressly preempted by the CAA. Unlike EPCA, EPA may waive federal motor vehicle emissions standard preemption under the CAA under certain conditions. As our attached comments on CARB’s ACC II proposal¹⁴ demonstrate, ACC II and CARB’s analysis supporting it are flawed because CARB failed to conduct an accurate lifecycle assessment (LCA) demonstrating that ACC II is needed to address compelling and extraordinary conditions or that its benefits exceed its costs. The lack of compelling and extraordinary conditions is highlighted by the fact that a recent EPA report on air quality trends shows continued improvement of ambient air quality for criteria pollutants.¹⁵ To the extent Illinois seeks to address greenhouse gas (GHG) emissions, EPA has never established a National Ambient Air Quality Standard (NAAQS), nor any requirements for states to implement plans and rules to reduce in-state, upwind, or downwind GHG concentrations. For these reasons, CARB’s adoption of ACC II cannot qualify for a CAA preemption waiver.

4. IPCB’s analysis supporting its proposed adoption of ACC II is arbitrary and capricious.

Where it does not simply adopt CARB’s analysis wholesale without meaningfully adjusting for the differences between the two states, IPCB’s analysis contains unsupported, inaccurate assertions regarding the costs and benefits of its proposal. IPCB’s evaluation thus fails to analyze meaningfully and transparently present its proposed action’s actual costs and benefits. IPCB fails to adequately investigate whether its electric grid can handle the significant increase in electricity demand that its adoption of ACC II will create, the potential electricity costs to consumers, the lifecycle emissions impacts of expanding electricity generation and transmission as well as electric vehicle (EV) production, the rising price of critical minerals needed for batteries, and the prospect of “leakage” as

¹⁴ Also available at: <https://www.arb.ca.gov/lists/com-attach/477-accii2022-AHcAdQBxBDZSeVc2.pdf>

¹⁵ U.S. EPA, Our Nation’s Air: Trends Through 2022, *available at* <https://gispub.epa.gov/air/trendsreport/2023/#home> (last visited May 25, 2023).

Illinois residents choose to buy non-EVs in surrounding states.

A critical difference between Illinois and California is the climate, with Illinois' colder weather negatively impacting charging efficiency and EV range.¹⁶ Recently, many EV drivers across the country were left stranded because of range reductions and the increased time necessary to charge an EV in cold temperatures.¹⁷ Illinois should ensure residents have reliable access to transportation in winter by preserving the public's ability to purchase new internal combustion engine vehicles. Simply put, Illinois' climate, electric grid, and population differ drastically from California's and thus require an IPCB analysis independent from the one conducted by CARB. IPCB dodges this responsibility with limited or no analysis uploaded in their docket. Without conducting state-specific studies, IPCB's decision to enact these proposed rules is premature, and stakeholders can't accurately assess the regulatory impact on all of Illinois.

Notably, IPCB lacks an adequate cost analysis for this regulatory action, which is mandated by the CAA. The CAA balances environmental protection and "productive economic activity,"¹⁸ giving "appropriate" consideration to benefits *and* costs.¹⁹ Yet, IPCB's own consideration of compliance costs is limited to discussing tax incentives for deploying public charging stations.²⁰ CARB was compliant and submitted their own study in their Appendix F for updated costs and benefits analysis.²¹ Setting aside whether it is accurate, they at minimum evaluated a variety of variables that the waivers will impact, including:

- Vehicle Average Incremental Costs and Total Industry Compliance Costs
- Total Cost of Ownership
- Employment Impacts
- New Business Creation or Existing Business Elimination
- Businesses Currently Doing Business within the State
- Investments in the State

IPCB must conduct a detailed cost analysis of implementing these standards before seriously considering enactment.

¹⁶ See, e.g., Sean Tucker, Study: All EVs Lose Range in the Cold, Some More Than Others (Kelley Blue Book Dec. 29, 2022); Paul Shepard, Quantifying the Negative Impact of Charging EVs in Cold Temperatures (EEPower Aug. 8, 2018).

¹⁷ See Pandise, Emily, et al., EV Drivers Wrestle with cold weather sapping their battery range. NBC News (Jan. 18, 2024), accessed at <https://www.msn.com/en-us/autos/news/ev-drivers-wrestle-with-cold-weather-sapping-their-batteryrange/ar-AA1nb74g>; DeLetter, Emily, Tesla Owners Say EV Batteries Won't Charge as Brutally Cold Temperatures Hit Chicago. USA Today (Jan. 17, 2024), accessed at <https://www.usatoday.com/story/money/cars/2024/01/17/teslabattery-charging-station-cold-chicago/72252874007/>

¹⁸ *Energy Future Coal. v. EPA*, 793 F.3d 141, 145 (D.C. Cir. 2015).

¹⁹ *Michigan v. EPA*, 576 U.S. 743 (2015).

²⁰ Rule Proponents' Proposed Clean Car and Truck Standards (Statement of Reasons), 35 Ill. Admin Code Part 242, atb45-46, and 57.

²¹ California Air Resources Board, *Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response: Advanced Clean Cars II*, August 2022, accessed April 21, 2025

Furthermore, the Illinois Administrative Procedure Act (“IAPA”) requires an economic impact analysis to be prepared before any rulemaking.²² Illinois Administrative Code also requires that before scheduling any hearing on a proposal, it must be “*supported by an adequate statement of reasons, is accompanied by a petition signed by at least 200 persons, is not plainly devoid of merit and does not deal with a subject on which a hearing has been held within the preceding six months.*”²³ Here, IPCB granted a hearing on a proposal that was devoid of merit because no economic impact analysis was conducted. IPCB requested that the Department of Commerce and Economic Opportunity (“DCEO”) conduct an economic impact study of the proposed rulemaking on July 11, 2024.²⁴ DCEO denied this request on August 28, 2024, citing a lack of industrial engineering expertise.²⁵ Despite this, IPCB granted a hearing on July 11, 2024—the same day it requested DCEO conduct an economic impact analysis. Without a sound analysis of these considerations listed above, IPCB is failing to fully comply with the IAPA, Illinois Administrative Code, and granting hearings based on proposals that are devoid of merit, as they lack any sound analysis of the effects of the proposed rulemaking. IPCB should ensure that Illinois residents, small businesses, and authorities have all the information about adopting ACC II.

II. States seeking to adopt California’s motor vehicle emission standards must ensure their regulations are identical to California’s.

Section 177 of the CAA allows Illinois to adopt California motor vehicle emission standards that have received a preemption waiver from EPA under Section 209; however, Illinois’ standards must be *identical* to California’s.

[A]ny State... may adopt and enforce for any model year standards relating to control of emissions... if such standards are *identical* to the California standards for which a waiver has been granted for such model year...²⁶

The statutory text is unambiguous, and IPCB’s proposal does not comply with the requirement for identicality. The IPCB’s board staff’s Answers to Pre-Filed Questions²⁷ confirms that the Proposed Rule does not meet the identicality requirement, conceding “these subsections are *not identical* to any specific provisions in California’s regulations.”

The board’s answer is in response to the proposed Section 242.101 Purpose and Applicability where applicability language appears to extend beyond that of California’s clean vehicle standards. Subsection (a) of Part 242 establishes emission standards,

²² 5 ILCS 100/5-30.

²³ 415 ILCS 5/28(a).

²⁴ <https://pcb.illinois.gov/documents/dsweb/Get/Document-110552>

²⁵ <https://pcb.illinois.gov/documents/dsweb/Get/Document-110872>

²⁶ CAA § 177, 42 U.S.C. § 7507.

²⁷ <https://pcb.illinois.gov/documents/dsweb/Get/Document-111205>

definitions, and requirements for “new motor vehicles and new motor vehicle engines.” “New motor vehicle” is defined as a vehicle’s odometer reading of less than 7,500 miles, and whether the title has ever been transferred to the ultimate purchaser. Subsection (b) indicates that proposed Part 242 applies to specified vehicles “offered for sale or lease, or sold, or leased, for registration in Illinois.” This applicability is not based on California’s vehicle emission standards, as stated by the board on page 22 of Answers to Pre-Filed Questions and is straightforwardly *not identical*.

In Section 242.102 Definitions, the board admits that multiple definitions in their proposal are not included in California’s standards and are instead using other sources for definitions, including Illinois law.²⁸ The board proceeds to list other sources from which their definitions were based (e.g., Authorized Emergency Vehicle: 625 ILCS § 5/1-105). As stated above, attempting to “supplement” the CARB regulations using Illinois and other regulatory definitions violates CAA Section 177’s identity requirement. The definitions are not in California’s standards and are thus *not identical*.

Furthermore, IPCB included Section 242.105 Exemptions, an inclusion that exempts used motor vehicles, varieties of said used motor vehicles, diesel-fueled buses sold to transit agencies, etc., from being prohibited in sale or registration without California emission standard certification. Nowhere in California’s ACC II, ACT, or HD Omnibus NO_x is an exemption section listed. IPCB makes the argument that California implied exemptions by questioning terms such as “intended for highway use” and others. Again, in attempting to promulgate provisions from similar sources, IPCB violates the CAA Section 177’s identity requirement.

The lack of identity in and of itself demonstrates that the Proposed Regulation must be withdrawn.

III. IPCB should wait until pending litigation is concluded before adopting state waivers.

IPCB’s proposed adoption of ACC II, ACT, and HD Omnibus NO_x presumes that California continues to have authority in promulgating these regulations. This, in turn, assumes that the Proposed Rules are not preempted by the CAA, EPCA, or RFS.²⁹ As these comments detail, however, the Proposed Rules are preempted³⁰ and litigation pending before the Supreme Court and lower courts has extensive influence that may impact the constitutionality of the CAA preemption-waiver mechanism and its specific application to California’s motor vehicle GHG emission regulations.

²⁸ See pg. 26 <https://pcb.illinois.gov/documents/dsweb/Get/Document-111205>

²⁹ See Interv. For Pet’r Br., *NRDC v. NHTSA*, Doc. 1976944 (Dec. 8, 2022) (D.C. Cir. No. 22-1080) (arguing EV mandates are impliedly preempted by the Renewable Fuel Standard).

³⁰ See *Texas v. EPA*, No. 22-1144 (D.C. Cir. filed June 30, 2022) (challenging Department of Transportation’s Corporate Average Fuel Economy (CAFE) rulemaking, alleging violation of statutory prohibition on incorporating EV mandates into such regulations).

Below are listed ongoing court cases with the relevant California rule that have a direct impact on the legality of IPCB's proposal:

- EPA California Waiver – ACT (***Western States Trucking Ass'n v. EPA***, D.C. Cir. No. 23-1143)
- CA ACCI – EPCA, Equal Sovereignty Doctrine (***Clean Fuels Development Coalition v. Kessler***, D. Minn. 23-cv-610)
- CA ACC-II – CEQA, Discrimination (***The Two Hundred v. CARB***, E.D. Ca. No. 22-1474)
- CA ACC-II – CEQA, Arbitrary & Capricious (***WSPA v. Cliff***, Cal. Sup. Ct. No. 22CECG03603)
- CA ACC-II – CA Waiver Preemption (***Valero Renewable Fuels Co. v. EPA***, D.C. Cir. No. 25-1078)
- Advanced Clean Fleets – ACF (***Western States Trucking Ass'n v. CARB***, Superior Ct Cal. No. 23CECG02964 (Fresno))
- Federal Preemption Challenge – ACF (***California Trucking Ass'n v. CARB***, E.D. Cal. No. 23-2333)
- Federal Preemption Challenge – ACF (***American Free Enterprise Chamber of Commerce v. Cliff***, E.D. Ca. No. 2:24-cv-00988)
- Advanced Clean Fleets (***Nebraska v. Cliff***, E.D. Cal. No. 2:24-cv-01364)
- Omnibus Low NOx – CA Waiver Preemption (***AFPM v. EPA***, D.C. Cir. 25-1083)

Separate and apart from all other issues raised in these comments, IPCB should at least wait until the federal judiciary has decided these disputed issues before adopting ACC II, ACT, and the HD Omnibus NOx. Rushing forward with adoption now risks considerable disruption and whipsawing of regulated parties' and other stakeholders' expectations and investments, as well as wasted IPCB resources.

IV. IPCB must consider recent executive orders concerning state emission policies.

IPCB ignores President Trump's January 20th Executive Order titled "Unleashing American Energy." The executive order directly "terminat[es]" "state emissions waivers that function to limit sales of gasoline-powered automobiles"³¹ under Section 2(e) as the new policy of the United States. By granting the proposal before waiting to see the effect of the Presidential transition, IPCB is acting prematurely and may instigate future legal issues for actions that conflict with federal energy goals.

³¹ <https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/>

Within the other numerous executive orders produced by the new administration, Executive Order 14260 titled “Protecting American Energy from State Overreach”³² introduces further complications to IPCB’s proposal. The executive order confronts California’s “burdensome and ideologically motivated “climate change” or energy policies that threaten American energy dominance” which brings into question the CA’s ACC II, ACT, and HD Omnibus NO_x that this proposal is allegedly sourced from. In response to these state laws, the Attorney General is to identify all state regulations preempted by Federal law and undertake legal action. As we stated earlier, IPCB’s proposal violates CAA Section 209(b)(1)(C) and is thus preempted by Federal law, opening this regulatory action to litigation.

V. Conclusion

IPCB’s adoption of ACC II is arbitrary and capricious. IPCB fails to adequately analyze the actual costs and benefits of adoption, ignoring whether its electrical grid can support such an adoption. IPCB also fails to adequately consider whether Illinois’ colder climate will support adopting ZEVs proven to respond poorly to freezing temperatures. IPCB granted a hearing on a proposal that was devoid of merit when they issued an order granting the proposal on the same day they requested an economic impact analysis, which was denied a month later by DCEO. The rulemaking violates the IAPA and the Illinois Administrative Code without an economic impact analysis.

Federal law preempts IPCB from adopting ACC II in multiple respects. IPCB should evaluate and propose performance standards as an alternative to its proposed adoption of ACC II and its EV mandate.

AFPM is continuing its efforts towards reducing emissions. Our members’ facilities are reducing the carbon intensity of fuels, while automakers continue improving the fuel efficiency of internal combustion engines. However, a mandate that removes Illinois manufacturers’ choice of whether to purchase ZEVs is not the answer. Instead, using a multi-technology pathway can help the state achieve faster and more certain emission reductions while expanding ways to reduce greenhouse gas emissions.

Thank you for considering our comments. AFPM would welcome the opportunity to discuss these comments and recommendations in more detail with you. Please feel free to contact us at mfuller@afpm.org with any questions or concerns

³² <https://www.federalregister.gov/documents/2025/04/14/2025-06379/protecting-american-energy-from-state-overreach>

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Matthew Fuller". The signature is fluid and cursive, with the first name "Matthew" and last name "Fuller" clearly distinguishable.

Matthew Fuller
Policy Analyst, Regulatory Affairs