

November 21, 2024

Jed R. Mandel, President
Truck & Engine Manufacturers Association
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Re: Exercise of Enforcement Discretion for the Heavy-Duty Engine and Vehicle Omnibus and Advanced Clean Fleets Regulations

Dear Jed:

At the May 23, 2024, California Air Resources Board (CARB or Board) hearing, several upfitters, dealers, and tow truck fleets spoke about their current inability to purchase heavy-duty (HD) vehicles due to supply chain restrictions and insufficient compliant engine availability arising from constraints that the commenters believed were attributable to the Advanced Clean Trucks (ACT) and the HD Engine and Vehicle Omnibus (Omnibus) regulations. In response to those concerns, CARB staff met with numerous stakeholders in an attempt to understand the factors underlying the product availability issue. CARB staff held over 40 meetings with stakeholders including representatives from all major truck and engine manufacturers, fleets, and dealers. Based on those conversations, it appears that product availability issues for the 2024 model year (MY) are primarily related to medium HD engine (MHDE) availability in California, and that the product availability issues are not caused by the ACT regulation, but rather from inaccurate sales projections of Omnibus-compliant engine families, limited availability of Omnibus-compliant vehicles from out-of-state dealerships, and manufacturer product offerings of Omnibus-compliant engines and vehicles.¹

Based on CARB staff's analysis of the information and the factors that appear to be contributing to the current unavailability of compliant HD engines in California, CARB will provide the following flexibilities to HD engine and vehicle manufacturers to ameliorate current product availability issues and to help ensure those issues will not recur through the 2026 MY.

1. Legacy Engine Cap Enforcement Discretion for the 2024 and 2025 MYs

Under Option 2 of the Omnibus regulation's legacy engine provisions, the total California sales volume of a manufacturer's legacy MHDEs may not exceed 60% of that manufacturer's

¹ See "California Truck Availability Analysis" memorandum from Steven S. Cliff, Ph.D. to Liane Randolph and Board Members, September 25, 2024. Available at: https://ww2.arb.ca.gov/sites/default/files/2024-09/240925_actmemo_ADA_0.pdf

total actual California sales of heavy-duty diesel engines (HDDE) for the 2024 and 2025 MYs. Members of the Truck and Engine Manufacturers Association (EMA) have expressed concerns that the current legacy provisions are restricting their ability to sell legacy engines in California at the same levels that they anticipated they would be able to sell when the legacy engine caps in CARB's 2023 Omnibus amendments were developed.

CARB will accordingly exercise enforcement discretion for legacy MHDE sales cap under Option 2 of the Omnibus regulation as follows:

If a Clean Truck partnership (CTP) signatory that produces and sells legacy MHDEs under Option 2 in 2024 and 2025 MYs demonstrates that its Omnibus-compliant engine sales (i.e., sales of natural gas engines and over 525 horsepower engines) for 2024 MY and/or 2025 MY are significantly lower than its original projections, it may sell up to a maximum of 5,000 legacy MHDEs, for each MY in the 2024-2025 MY period. The 5,000-unit sales cap was the projected 2024 and 2025 MY sales volume for a manufacturer using Option 2 for legacy engine sales.

The foregoing enforcement discretion is warranted for the following reasons:

- The enforcement discretion would allow manufacturers to provide additional California-compliant engines and vehicles to California-based businesses that rely on such engines and vehicles that are currently being negatively impacted by product availability issues;
- The enforcement discretion would only allow sales up to the number of legacy engines intended to be produced when the CTP agreement was signed and when the 2023 Omnibus amendments were developed;
- The additional sales of HDDEs would result in no emissions increases because all excess legacy engine emissions would be offset, per the Omnibus regulation requirements; and
- Although CARB has requested that the U.S. Environmental Protection Agency (U.S. EPA) grant California a waiver and authorization for its Omnibus Regulation, as the regulation was adopted in 2021 and amended in 2023, U.S. EPA has not yet acted on that request.

2. Enforcement Discretion Regarding HD Engine Sales and Registration in California for 2025 and 2026 MYs

On December 17, 2023, CARB issued an enforcement discretion letter with regards to possible sales and registration of non-compliant HD engines in California in 2024 MY. That letter clarified that if customers for 50-state legacy engines/vehicles specify that they intend to initially register those new engines/vehicles outside California, manufacturers would not need to offset the emissions associated with those engines under the Omnibus legacy provisions. However, EMA members also expressed concerns that these customers may

nonetheless subsequently use, register, or resell those new trucks in California, arguably exposing manufacturers to a liability for violations of California law.

CARB recognizes that its adoption of the Omnibus regulation has resulted in the promulgation of emission standards for California medium-duty and HD vehicles and engines that are distinct from, and more stringent than, the corresponding federal emissions standards. This constitutes a change from the preexisting regulatory program for medium-duty and HD vehicles and engines, wherein California and federal HD engine and vehicle standards have been essentially aligned for over two decades, which allowed engine manufacturers to produce and sell the same engine family platform throughout the nation. It appears that differences between California and federal emissions standards may be contributing to the above-mentioned concerns.

Therefore, based on the specific information provided by EMA members and the circumstances resulting from CARB's implementation of the Omnibus regulation, CARB determined that initiating enforcement actions based on the aforementioned scenarios affecting sales or labeling of 50-state legacy engines to customers registering those vehicles outside of California is not warranted. The enforcement discretion only applied to EMA and the other signatory parties of the CTP and only extended to sales of MY 2024 engines.

Based on the information obtained by CARB staff subsequent to the May 23, 2024, Board hearing, it is apparent that the circumstances that led CARB to issue the December 17, 2023, enforcement letter will continue to affect sales of 2025 and 2026 model year engines. Therefore, CARB is extending the December 17, 2023, enforcement discretion letter to also apply to 2025 and 2026 MY engines. The extension of the enforcement discretion is only applicable to EMA and the other signatory parties of the CTP.

3. Enforcement Discretion for the Advanced Clean Fleets (ACF) Regulation for 2026 MY

On July 6, 2023, CARB issued a letter to provide enforcement discretion for limited provisions of the ACF regulation. The enforcement discretion was granted in response to a request from EMA indicating that the requirements set forth in Title 13, California Code of Regulations (CCR), section 2015(r) presented issues that were adversely affecting EMA members' ability to provide fleets with vehicles powered by internal combustion engines. EMA's request further indicated that these issues directly impacted the ability of out-of-state fleets that operate in California to effectively place orders and conduct their business operations. EMA's request also claimed that the Title 13, CCR, section 2015(r) provision of ACF would undermine the flexibilities built into the proposed changes to the Title 13, CCR, section 1956.8 legacy provisions in the Omnibus regulation. Based on the information in EMA's request, CARB provided enforcement discretion for 2024 and 2025 MYs for original equipment manufacturers (OEM) and their customer fleets that buy and sell engines outside California then operate them in California.

Based on the information obtained by CARB staff subsequent to the May 23, 2024, Board hearing, it is apparent that the issues presented in EMA's previous request will also extend

to the 2026 MY. Consequently, CARB will extend its existing enforcement discretion to the 2026 MY. This extension only applies to CTP signatories and their customer fleets that buy and sell engines outside of California before operating them in California. The enforcement discretion is only intended for those fleets or selling CTP signatories' OEMs in which the 2026 MY engines operating in California are sold outside of California and either California certified or 50-state certified. CARB recognizes that initiating enforcement actions against an out-of-state fleet, or selling OEMs, based on non-compliance with Title 13, CCR, section 2015(r) for 2026 MY may not be warranted based on the specific and fluctuating circumstances of engine sales.

4. Issuance of Clean Idle Label (CIL) Manufacturer Advisory Correspondence (MAC) for 2026 MY Legacy Engines

On December 22, 2022, CARB issued MAC 2022-04 to provide guidance on California's CIL requirements for 2024 and 2025 MY legacy engines as defined in Title 13, CCR, section 1956.8(a)(2)(C)3.

At that time, engine manufacturers indicated concerns that the lack of a CIL for 2024 and 2025 MY legacy engines that were delivered for sale in other states could present an issue in many municipalities outside of California or Section 177 states that have adopted truck idling restrictions. To address their concern, MAC 2022-04 was issued to allow the use of CIL on 50-state certified 2024-2025 MY legacy engines, and 2024-2026 MY HDDEs rated at or above 525 brake-horsepower.

CARB staff plans to issue a new MAC in 2024 to provide supplemental information to MAC 2022-04 reflecting the changes that were incorporated in the 2023 Omnibus amendments. Since these amendments extended the ability to certify legacy engines to 2026 MY, CARB staff plans to extend the allowance to use California CILs to the 2026 MY for 50-state certified legacy engines in the new MAC. All 2024 to 2026 MY legacy engines that are delivered for sale in California must include the term "CA" on their engine labels. Furthermore, all excess emissions from legacy engines that are delivered for sale in California must be offset as described in Title 13, CCR, section 1956.8(a)(2)(C)3.

If you have any additional questions or comments, please contact Kim Heroy-Rogalski, Branch Chief, Mobile Source Control Division.

Sincerely,



Ellen M. Peter, Chief Counsel

cc: Kim Heroy-Rogalski, Chief, Mobile Source Regulatory Development Branch