

**Via email only**

December 17, 2023

Jed R. Mandel  
President  
Truck & Engine Manufacturers Association  
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Chicago, Illinois 60606  
[jmandel@emamail.org](mailto:jmandel@emamail.org)

Re: Exercise of Enforcement Discretion of the California Heavy-Duty Engine and Vehicle Omnibus Regulation For Specified Entities

Dear Jed:

This letter responds to requests by members of the Engine Manufacturers Association (hereafter EMA) that CARB exercise enforcement discretion in enforcing provisions of California's Heavy-Duty Engine and Vehicle Omnibus (hereafter "Omnibus") regulation.<sup>1,2</sup> Those members have explained that their concerns arise in the specific context of their initial sales of new 2024 through 2026 model year engines certified to the emissions standards of both the Omnibus regulation's legacy engine provisions and applicable federal emission standards (hereafter "50-state legacy engines"), to customers intending to register these vehicles outside of California.

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<sup>1</sup> This letter is solely applicable to EMA, the Ford Motor Company, and the members of EMA that entered into the Clean Truck Partnership with CARB on July 5, 2023. Under the terms of that agreement, EMA, the Ford Motor Company, and the members of EMA that produce on-road medium- and heavy-duty engines agreed, in pertinent part, to commit to meet in California the requirements of the Omnibus regulation as they existed on December 22, 2021, and as those requirements are modified by subsequent specified amendments to the Omnibus regulation, regardless of the outcome of any litigation challenging the waiver request for the Omnibus regulation or CARB's overall authority to implement the Omnibus regulation.

<sup>2</sup> The Omnibus regulation is comprised of new title 13, California Code of Regulations (Cal. Code Regs.) sections 2139.5, and 2169.1 through 2169.8; amendments to title 13, Cal. Code Regs., sections 1900, 1956.8, 1961.2, 1965, 1968.2, 1971.1, 1971.5, 2035, 2036, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2121, 2123, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2133, 2137, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2166, 2166.1, 2167, 2168, 2169, 2170, 2423, and 2485; and amendments to title 17 Cal. Code Regs. sections 95662 and 95663.

The Omnibus regulation's legacy engine provisions<sup>3</sup> provide compliance flexibilities to manufacturers by allowing manufacturers to produce and sell engines in California that are certified to exhaust emissions standards for oxides of nitrogen and particulate matter that are less stringent than the otherwise applicable primary emissions standards, provided those manufacturers fully offset any emissions increases resulting from those engines with credits generated from heavy-duty zero emission credits, from combustion credits, or by performing projects in disadvantaged communities.

As you are aware, CARB has issued policy guidance in Manufacturer's Advisory Guidance 22-04, entitled "Clean Idle Label (CIL) for 2024 and 2025 MY HDDEs Defined as Legacy Engines and 2024 through 2026 MY HDDEs at or above 525 Brake-horsepower Maximum Power" (MAC #22-04) that, in pertinent part, provides that the Omnibus regulation "does not require [averaging, banking, trading] ABT offsets nor legacy engine sales limits for engines sold in states that have not adopted the Omnibus Regulation." MAC #22-04, pp. 4-5.

Relying on this framework EMA members (manufacturers) understood that, if customers for 50-state legacy engines/vehicles specify they intend to initially register those new engines/vehicles outside California, the emissions associated with the engines powering these new trucks are not required to be offset or counted under the Omnibus legacy provisions. However, EMA members have 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.<sup>4</sup> CARB understands this concern and the potential for unmitigated (and uncapped) Omnibus legacy engines to leak into the State. This is one of the reasons that CARB agreed to provide EMA members guidance through a Manufacturers Advisory Correspondence (MAC) prescribing how to demonstrate legacy engine cap compliance. CARB will continue to work on clarifying the law for liability between fleets and manufacturers in these circumstances for 2025 plus model years.

CARB recognizes that its adoption of the Omnibus regulation has resulted in the promulgation of emission standards for California medium- and heavy-duty vehicles and engines that are distinct from, and more stringent than, the corresponding federal emissions standards, which constitutes a change from the preexisting regulatory program

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<sup>3</sup> The legacy engine provisions are forth in Cal. Code Regs., title 13, section 1956.8(a)(2)(C)3. CARB is currently considering the adoption of proposed amendments to the legacy engine provisions that would provide manufacturers additional flexibility to produce and certify larger numbers of 2024 through 2026 model year legacy engines than under the existing legacy provisions. [Heavy-Duty Engine and Vehicle Omnibus Regulation Amendments | California Air Resources Board](#)

<sup>4</sup> Notably, Health and Safety Code section 43151 provides, in pertinent part, that only new California certified engines and vehicles may be sold, offered for sale, introduced into commerce, purchased, rented, leased, or acquired, for use, registration, or resale in this California.

for medium- and heavy-duty vehicles and engines, wherein California and federal heavy-duty engine and vehicle standards have been essentially aligned for over two decades, which allowed engine manufacturers to produce and sell a single engine throughout the nation. It also appears that difference between California and federal emissions standards may be contributing to the above-mentioned concerns.

Therefore, based on the specific information provided by EMA's members and the circumstances resulting from CARB's implementation of the Omnibus regulation, CARB has 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. This enforcement discretion only applies to EMA and the other signatory parties to the Clean Truck Partnership agreement as of July 5, 2023,<sup>5</sup> and only extends to sales of MY 2024 engines.

Please let us know if you have any questions.

Sincerely,



Ellen M. Peter  
Chief Counsel

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<sup>5</sup> Cummins Inc., Daimler Truck North America,, General Motors Company, Hino Motors Limited, Isuzu Technical Center of America, Inc., Navistar, Inc., PACCAR Inc., Stellantis N.V., Volvo Group North America, and the Ford Motor Company.