

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of California’s Request for)
Waiver Action Pursuant to Clean Air Act)
Section 209(b) for 2023 Amendments to)
California’s “Omnibus” Regulation)
_____)

**CLEAN AIR ACT § 209(b) WAIVER REQUEST SUPPORT DOCUMENT SUBMITTED
BY THE CALIFORNIA AIR RESOURCES BOARD
July 8, 2024**

I. INTRODUCTION AND OVERVIEW

This document supports the request of the California Air Resources Board (CARB or Board) that the Administrator of the United States Environmental Protection Agency (EPA) grant a preemption waiver pursuant to Clean Air Act (CAA) section 209(b) in light of CARB’s addition of 2023 Amendments to the California Heavy-Duty Engine and Vehicle Omnibus (Omnibus) regulation¹ (hereinafter 2023 Amendments or Amendments) to California’s new motor vehicle emissions control program.

As described in greater detail in this document, the 2023 Amendments primarily provide qualifying engine manufacturers greater flexibility to comply with the Omnibus regulation by allowing such manufacturers to produce and certify greater numbers of 2024 through 2026 model year (MY) engines that do not meet the primary emission standards of the Omnibus regulation (hereinafter “legacy engines”),² provided those manufacturers offset any emissions increases resulting from such legacy engines. Because those offsets are required, the 2023 Amendments are not anticipated to change the emission benefits of the Omnibus regulation as originally adopted, or to alter the analysis of any of the waiver criteria such that EPA could deny this waiver request.

Section II of this document provides a brief description of the Board’s rulemaking action. Section III presents a summary of the elements of the 2023 Amendments that require waiver action. Section IV identifies the principles applicable to waiver actions and

¹ The Waiver and Authorization Request Support Document associated with CARB’s Omnibus regulation provides a detailed overview of the elements of that regulation. EPA-HQ-OAR-2022-0332-0009.

² Diesel-fueled legacy engines are subject to exhaust emission standards of: 0.20 grams of oxides of nitrogen (NOx) per brake horsepower hour (g/bhp-hr), 0.01 grams of particulate matter (PM)/bhp-hr, 0.14 grams nonmethane hydrocarbon (NMHC) /bhp-hr, and 15.5 grams carbon monoxide/bhp-hr.

Section V demonstrates that EPA has no basis to deny granting the requested waiver action.

II. OVERVIEW OF CARB'S RULEMAKING ACTIONS

At its August 27, 2020 public hearing, the Board approved the adoption of the initial Omnibus Regulation. CARB's Executive Officer formally adopted the Omnibus regulation in Executive Order R-21-007 on September 9, 2021. The initial Omnibus regulation was approved by California's Office of Administrative Law, filed with California's Secretary of State, and became operative under state law on December 22, 2021. On January 31, 2022, CARB requested that EPA grant California a waiver and authorization for its on-road and off-road emissions programs, in light of the addition of the initial Omnibus regulation.³

On March 23, 2023, the Board delegated to CARB's Executive Officer the authority to adopt, amend, and revoke emissions standards, test procedures, and compliance flexibilities for new on-road motor vehicles until December 31, 2023. Resolution 23-15 (Enclosure 1). That delegation specifically authorized CARB's Executive Officer to consider adopting or amending emissions standards, test procedures, and compliance test procedures to provide manufacturers additional compliance flexibility to meet the requirements of new regulations to facilitate implementation, while also ensuring that flexibility would not reduce the emissions benefits of existing Board regulations.

CARB's Executive Officer conducted a public hearing on October 20, 2023, to consider the adoption of the 2023 Amendments to the Omnibus regulation. Following that public hearing, staff subsequently made additional proposed modifications to the initially proposed 2023 Amendments available for a public comment period that ended on December 21, 2023. (Enclosures 6, and 7a to 7h).

On December 28, 2023, CARB's Executive Officer adopted the 2023 Amendments by Executive Order R-23-006 (Enclosure 9). The 2023 Amendments were approved by California's Office of Administrative Law (OAL), filed with California's Secretary of State, and became operative under state law on May 31, 2024.

III. SUMMARY OF THE 2023 AMENDMENTS TO THE OMNIBUS REGULATION

This section provides an overview of the emissions standards and accompanying enforcement provisions of both the initially adopted Omnibus regulation and the 2023 Amendments to the Omnibus regulation.

³ CARB requested an authorization because elements of the initial Omnibus regulation establish emissions standards for off-road engines. The 2023 Amendments only establish emissions standards and accompanying enforcement procedures for on-road engines.

A. Overview of the Initially Adopted Omnibus Regulation

As described in greater detail in the Waiver and Authorization Request Support Document for the Omnibus regulation,⁴ the initially adopted Omnibus regulation primarily: (1) establishes more stringent oxides of nitrogen (NOx) and particulate matter (PM) exhaust emission standards for new 2024 and subsequent MY medium- and heavy-duty (HD) diesel cycle and Otto-cycle engines, including emissions standards as measured on a new low load cycle (LLC) that reflects engine operations under low load and low speed urban driving operations; (2) establishes more rigorous durability demonstration program requirements for new 2024 and subsequent MY medium- and HD diesel engines (HDDE); (3) extends the useful life periods of 2027 and subsequent MY HD engines; (4) significantly extends the emissions warranty periods for 2027 and subsequent MY HD diesel and Otto-cycle engines and 2027 and subsequent MY HD vehicles exceeding 14,000 lbs. gross vehicle weight rating that are equipped with such engines; and (5) establishes a new in-use test procedure and new in-use compliance criteria that utilize a moving-average window (MAW) approach to assess the real world, in-use emissions compliance of both HDDEs and HD Otto-cycle engines.

The Omnibus regulation also establishes several compliance flexibilities for specified categories of HD engines and HD vehicles. Specifically, the initial Omnibus regulation established the following provisions for 2024 through 2026 MY HDDEs rated at or above 525 hp, and for 2024 and 2025 MY HDDEs rated below 525 hp. These provisions are highlighted here because they are the most relevant to the 2023 Amendments that are the subject of this supplemental support document.

1. 2024-2026 MY Heavy-Duty Engines Rated At or Above 525 bhp

The Omnibus regulation exempts 2024 through 2026 MY HDDEs rated at or above 525 bhp maximum power from otherwise applicable Omnibus exhaust emission standards. Engines with this power rating are typically used in heavy-haul applications and have relatively few sales in California, and the manufacturers of these engines may therefore have difficulty allocating resources to redesign such engines, while also allocating resources and managing design changes for more popular engine families. Manufacturers utilizing this exemption must demonstrate that qualifying engines comply with preexisting exhaust emission standards, engine idling requirements as specified in 13 CCR 1956.8(a)(6), and applicable California emissions warranty requirements applicable to the MY of the engine, as specified in 13 CCR 2036. In addition, this provision is only available to manufacturers that certified and sold in California 2018 or 2019 MY heavy heavy-duty (HHDD) engines meeting the horsepower rating criteria, and the provision limits the number of qualifying engines to 110 percent of a manufacturer's 2018 or 2019 MY sales of HHDD engines meeting the horsepower rating criteria, whichever is greater.

⁴ EPA-HQ-OAR-2022-0332-0009.

2. Legacy Engines – 2024-2025 MY Heavy-Duty Diesel Engines Rated Below 525 bhp

The Omnibus regulation also provides manufacturers the option to certify 2024 and 2025 MY HDDEs rated below 525 bhp to the preexisting NOx and PM exhaust emission standards (hereinafter, legacy engines),⁵ provided they offset any resulting NOx or PM deficits with credits obtained from the HD zero-emission averaging set, and provided the legacy engines otherwise comply with specified regulatory requirements. If a sufficient number of credits from the zero-emission averaging set are not available, or if such credits are not available below a specified cost threshold, manufacturers can instead use credits from a combustion-engine averaging set corresponding to the classification of the engine to offset any resulting NOx or PM deficits.

If a sufficient quantity of credits from the same combustion engine averaging set are not available, manufacturers can carry over NOx or PM deficit balances until the end of the 2026 MY but must then offset that deficit balance by 125 percent. Manufacturers that fail to offset their deficit balances by the end of the 2026 MY must provide documentation substantiating that they attempted, but were unable to, purchase credits at a price below a specified threshold, and must submit a plan demonstrating that any deficits will be offset in five years and that such reductions would primarily benefit disadvantaged communities.

This compliance flexibility provision limits the number of qualifying legacy engines to 45 percent of a manufacturer's total HDDE sales in California in the 2024 MY, and 25 percent of a manufacturer's total California sales in the 2025 MY. Furthermore, to utilize this provision, a manufacturer must certify one or more diesel engine families to the primary NOx standards specified in 13 CCR § 1956.8(a)(2)(C)¹⁶ in the same year it is utilizing this option to certify legacy engines.

B. Summary of 2023 Amendments

More detailed descriptions of these provisions are provided in the Staff Report: Initial Statement of Reasons (Staff Report, Enclosure 3), the Notice of Public Availability of Modified Text and Availability of Additional Information (Enclosures 6 and 7a through 7h), the Final Statement of Reasons (FSOR, Enclosure 8), and the Addendum to the Final Statement of Reasons (Enclosure 8a).

⁵ The pre-existing criteria for legacy engines is set forth in Cal. Code Regs., tit. 13, § 1956.8(a)(2)(C)3.

⁶ Those standards are: 0.050 g NOx/bhp-hr, 0.005 g PM/bhp-hr, 0.14 g NMHC/bhp-hr, and 15.5 g CO/bhp-hr, as measured over the Federal Test Procedure and Ramped Modal Cycle, and 0.200 g NOx/bhp-hr, 0.005 g PM/bhp-hr, 0.14 g NMHC/bhp-hr, and 15.5 g CO/bhp-hr, as measured over the low load cycle.

In 2023, as the timeline for manufacturers to submit certification applications for 2024 MY engines was drawing near, CARB staff became aware through manufacturer product plans that although technology needed for 2024 through 2026 MY diesel-fueled internal combustion engines to comply with the Omnibus regulation's primary emissions standards was available, manufacturers did not intend to produce such engines for some categories of trucks in California. In light of the projected adverse impacts to California fleets resulting from those manufacturer decisions, CARB considered and ultimately adopted limited amendments to the Omnibus regulation to provide manufacturers additional flexibility, and thereby ensure the adequate availability of HDDEs in certain engine families within California for the 2024 through 2026 MYs, while also ensuring that the emission benefits of the Omnibus regulation are preserved.

The 2023 Amendments primarily expand the preexisting compliance flexibility provisions described above in III.A by now providing manufacturers two options to certify legacy engines.

1. Expanded Legacy Engine Options

a. Extend Existing Compliance Flexibility Provisions to 2026 MY Engines

The first option extends the pre-existing legacy engine provisions to now provide manufacturers the option to certify up to ten percent of their total actual sales of 2026 MY HDDEs under the legacy provisions. If a manufacturer exceeds its applicable legacy engine sales limits under this option, it will incur an additional deficit equivalent to the emissions generated by the number of legacy engines times one percent of its total sales volumes of its California HDDEs. The manufacturer must then offset that additional deficit by a factor of four. Any legacy engine sales that exceed the sum of the applicable legacy sales limits and the one percent of total sales volumes of California HDDEs are deemed to be non-compliant sales.

For example, assume a manufacturer utilizes this option to certify 2024 MY engines, and sells 1000 HDDEs in California, 500 of which are legacy engines. Because the manufacturer's legacy engine limit is 450 legacy engines, it must offset the deficit from 450 of those engines at the normal rate and must additionally offset an additional deficit equivalent to the emissions generated by 10 legacy engines (1 percent of 1000 engine sales) by a factor of four. The remaining 40 engines are deemed to be non-compliant with the Omnibus regulation.

b. Expanded Compliance Flexibility for Manufacturers that Produce Both Medium Heavy-Duty Diesel (MHDD) Engines and Engines in Other Primary Intended Weight Classes

The second option extends the availability of the legacy engine provisions to manufacturers that produce both MHDD engines and engines in other HD diesel primary intended service classes. For instance, an engine manufacturer that produces both MHDD and HHDD engines may elect to utilize this compliance flexibility option.

Under this option, a manufacturer can elect to sell up to 60 percent of its total sales of California HDDEs as MHDD legacy engines in the 2024 and 2025 MYs. The sales limits for a manufacturer's combined light heavy-duty diesel (LHDD) and HHDD engines are 15 percent in the 2024 MY, and 8 percent in the 2025 MY.

If a manufacturer exceeds its applicable legacy engine sales limits under this option, it will incur an additional deficit equivalent to the emissions generated by the number of MHDD legacy engines times five percent of its total sales volumes of its California HDDEs, and by the number of LHDD and HHDD engines times one percent of its total sales volume of its California HDDEs. The manufacturer must then offset that additional deficit by a factor of four.

The 2023 Amendments do not substantively modify the pre-existing pathways discussed in Section III.A for manufacturers to offset emissions deficits generated from legacy engines, but now allow manufacturers to certify legacy engines before they are required to certify other engine families to the primary NOx standards of the Omnibus regulation, and additionally allow manufacturers to commence working on projects to offset legacy engine emissions in disadvantaged communities as early as 2024.

The 2023 Amendments are emissions-neutral, because they require manufacturers electing to certify and sell legacy engines under either of the above-mentioned options to offset all NOx and PM emissions deficits generated by the sale of legacy engines in California in accordance with the pathways established in the preexisting regulation; *i.e.*, either obtaining credits from production and sale of zero-emitting HD vehicles, credits derived from the same HDDE combustion-engine averaging set (*i.e.*, producing and selling engines that are cleaner than Omnibus standards), or performing projects that are demonstrated to offset the emissions deficits within five years in California disadvantaged communities. Furthermore, under both options, manufacturers must offset deficits accruing from sales of legacy engines that exceed applicable sales limits by a factor of four. For instance, if a manufacturer's excessive sales of legacy engines generate an emissions deficit of 1 mega-gram (Mg) of NOx, the manufacturer would have to offset an emissions deficit of 4 Mg of NOx.

c. Engine Labeling Requirements

The 2023 Amendments now require new 2024 through 2026 MY engines that are certified pursuant to the legacy provisions discussed in Section III.B.1 to include a "CA" designation on their engine labels.

d. Option to Specify Family Emission Limits to Two or Three Decimal Places

The 2023 Amendments allow manufacturers electing to certify engines under the legacy options described above in Section III.B.1 to specify family emissions limits (FELs) to

either two or three decimal places. For example, a manufacturer can specify a FEL for PM as either 0.01 g/bhp-hr or 0.005 g/bhp-hr.

2. Expanded Flexibility to Commence Projects to Offset Emissions in Disadvantaged Communities

The initially adopted Omnibus regulation precluded manufacturers that must offset emissions deficits accrued from legacy engines from submitting proposals for, or undertaking projects targeted in disadvantaged communities until the 2026 MY. The 2023 Amendments now allow manufacturers to submit proposals for and to undertake such projects in the 2024 and 2025 MYs, which should benefit disadvantaged communities to the extent manufacturers elect to more expeditiously propose and commence such projects.

3. Modify Definition of California Sales Volume

The initially adopted Omnibus regulation defined California sales volume as the number of new California-certified engines, vehicles, or powertrains sold to an ultimate purchaser in California in a given MY. The 2023 Amendments amend that definition to now encompass new California certified engines, vehicles, or powertrains that are produced and delivered for sale in California in a given MY. This element of the 2023 Amendments will provide manufacturers greater flexibility in tracking which new engines and new vehicles are produced and delivered for sale in California, as distinguished from new engines and new vehicles produced and delivered for sale in other states.

4. Clarification of HD OBD Requirements For 2024-2026 MY Heavy-Duty Engines Rated At or Above 525 bhp And Exempted From the Omnibus Regulation's Primary Exhaust Emission Standards.

The 2023 Amendments clarify that the initially adopted Omnibus regulation allows manufacturers to certify 2024 through 2026 MY HDDEs rated at or above 525 brake horsepower and that qualify for the exemption described in Section III.A.1, by submitting a federal certificate of conformity demonstrating such engines comply with all applicable federal emissions requirements, including federal on-board diagnostic requirements for HD engines.

IV. WAIVER CRITERIA AND PRINCIPLES

A. Criteria for Granting Waivers of Preemption Under CAA Section 209(b)

Section 209(a) of the CAA provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or any new

motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b) of the CAA sets forth the protocol for granting California⁷ a waiver from the preemption of section 209(a). Under section 209(b), the Administrator must grant a waiver to California if the state has determined that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards, unless the Administrator finds that (1) the state's protectiveness determination is arbitrary and capricious, (2) California does not need a state program to meet compelling and extraordinary conditions, or (3) the state's program and accompanying enforcement procedures are not consistent with section 202(a) of the CAA.

B. Principles Followed in Granting CAA Section 209(b) Waivers

1. The Burden Is on the Opponents Challenging the Request

In considering a waiver request, California is presumed to have satisfied the criteria for obtaining a waiver, and the burden to show otherwise is on those persons challenging the request.⁸ The statutory text makes this clear by identifying only factual criteria for denial, and by phrasing those criteria in the negative. Thus, the waiver "shall" be granted unless the record supports one of the identified factual findings. California would never reasonably be expected to make a showing as to any of the criteria for denial—e.g., that its protectiveness determination is arbitrary, that it does not need its program, or that its program is somehow infeasible. Hence, the text makes clear that the burden is on opponents to prove that one or more of the criteria for a denial is met. This has long been EPA's approach,⁹ and that approach has been upheld by the D.C. Circuit and ratified by Congress.¹⁰

⁷CAA section 209(b) provides for granting a waiver to "any State that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966." California is the only State that meets this eligibility criterion. See, e.g., S. Rep. No. 90-403, at 632 (1967) and *Motor and Equipment Manufacturers Association v. EPA (MEMA I)* 627 F.2d 1095, 1101 fn. 1 (D.C. Cir. 1979).

⁸ *MEMA I*, 627 F.2d at 1121.

⁹See e.g., 36 Fed. Reg. 17,458-17,459 (Aug. 31, 1971); 40 Fed. Reg. 23,102, 23,103 (May 28, 1975); Decision Document accompanying 61 Fed. Reg. 53371 at p. 15-16.

¹⁰ *MEMA I*, 627 F.2d at 1121. When Congress amended Section 209(b)(1) in 1977 to expand California's discretion, it expressly approved EPA's application of the waiver provision. H.R. Rep. No. 95-294, at 301 (1977). Then, in 1990, Congress further ratified EPA's approach to Section 209(b)(1) by re-enacting virtually identical text in Section 209(e)(2).

2. The Scope of the Waiver/Authorization Proceeding Is Limited

The scope of the Administrator's inquiry in considering a waiver request is limited by the express terms of CAA section 209(b)(1). Once California determines that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, the Administrator must grant the waiver unless one of the three specified findings can be made.

This reading of the statute is consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *MEMA I* and with prior EPA waiver decisions applying CAA section 209(b), which hold that the review of California's decision to adopt separate standards is a narrow one.¹¹ In granting the waiver for the On-Board Diagnostics (OBD II) regulation in 1996, Administrator Carol Browner concluded that she must grant a waiver if she could not find sufficient evidence in the record to support any of the criteria that would allow a denial.¹² Much earlier Administrator William D. Ruckleshaus stated:

The law makes it clear that the waiver request cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209¹³

3. Deference Must Be Accorded to California's Policy Judgments

In granting waivers to California for its new motor vehicle program, EPA has repeatedly and routinely deferred to the policy judgments of California's decision-makers. EPA has recognized that the intent of Congress in creating a limited review of California's waiver requests was to ensure that the federal government did not second-guess the wisdom of state policy.¹⁴ Administrators have recognized that the deference is wide-ranging:

The structure and history of the California waiver provision clearly indicate both a Congressional intent and an EPA practice of leaving the decision on ambiguous and controversial matters of public policy to California's judgment.

¹¹ See 40 Fed. Reg. 23102, 23103 (May 28, 1975).

¹² 61 Fed. Reg. 53371 (Oct. 11, 1996); *Motor & Equip. Mfrs Ass'n v. Nichols*, ("MEMA II") 142 F.3d 449 (D.C. Cir. 1998).

¹³ 36 Fed. Reg. 17158 (Aug. 31, 1971). See also 40 Fed. Reg. 23102, 23104; Decision Document accompanying 58 Fed. Reg. 4166 (Jan. 7, 1993) at pp. 20-21; 74 Fed. Reg. 32744, 32748 (July 8, 2009).

¹⁴ See also, e.g., 74 Fed. Reg. 32744, 32748 (July 8, 2009).

* * * * *

It is worth noting . . . I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator. The whole approach of the Clean Air Act is to force the development of new types of emission control technology where that is needed by compelling the industry to “catch up” to some degree with newly promulgated standards. Such an approach . . . may be attended with costs . . . and by risks that a wider number of vehicle classes may not be able to complete their development work in time. Since a balancing of these risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I believe *I am required to give very substantial deference to California’s judgments on this score.*¹⁵

The interpretation and application of the Clean Air Act by these Administrators is correct.

V. EPA MUST WAIVE PREEMPTION FOR THE CALIFORNIA NEW MOTOR VEHICLE EMISSIONS CONTROL PROGRAM, AS AMENDED BY THE REVISED OMNIBUS REGULATION

CARB submits that for the reasons set forth below, and in the documents associated with both its initial request for a waiver and authorization action for the initially adopted Omnibus regulation and this waiver request, the Administrator must grant California a new waiver, as the Administrator has no basis under the criteria of CAA section 209(b) to deny California’s request.

A. Protectiveness

In reviewing CARB’s protectiveness determination, EPA traditionally evaluates the stringency of California’s emissions standards (including any newly adopted or amended standards) to comparable EPA emission standards, and that comparison has been undertaken in the broader context of the previously waived California program and protectiveness determinations that EPA has previously determined were not arbitrary and capricious.¹⁶ Given that backdrop, the protectiveness question is often framed as whether the changes to California’s program render it less protective than EPA’s.

¹⁵ 40 Fed. Reg. 23102, 23104 (emphasis added). See also Decision Document accompanying 58 Fed. Reg. 4166 (Jan. 17, 1993) at p. 64.

¹⁶ 74 Fed. Reg. 32744, 32749 (July 8, 2009); 70 Fed. Reg. 50322 (Aug. 26, 2005); 77 Fed. Reg. 9239 (Feb. 16, 2012).

EPA's evaluation tracks the two discussions of protectiveness in the text of section 209(b). Specifically, section 209(b)(2) states: "[i]f each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of [209(b)(1)]." EPA can consider the individual standards in a given waiver request under Section 209(b)(2) because that text provides that comparison as one path to determine whether the changes to California's program render it less protective than EPA's.

But the statute does not require each state standard to be at least as stringent as any comparable federal standard because section 209(b)(1) requires only that California determine "the State standards will be, *in the aggregate*, at least as protective of public health and welfare as applicable Federal standards."¹⁷

Thus, in addition to the inquiry under Section 209(b)(2), EPA also considers whether California's standards as a whole program are *collectively* at least as protective as federal standards.¹⁸ In so doing, EPA considers whether the entire California new motor vehicle emissions program - including the standards for which the waiver is requested—is at least as protective as the federal program.¹⁹

Congress directed that EPA review California's protectiveness determination under the deferential arbitrary and capricious standard. EPA has correctly understood that this would require " 'clear and compelling evidence' "to show that the changes to California's program undermine the relative protectiveness of California's standards in the aggregate."²⁰

In adopting the 2023 Amendments, CARB's Executive Officer issued Executive Order R-23-006 (Enclosure 9), in which he expressly stated:

"Be it further resolved that the Executive Officer determines that the amendments adopted herein will not cause California motor vehicle engine emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards."

The Administrator has no basis to find that the Executive Officer's determination is arbitrary or capricious. As discussed in CARB's Waiver and Authorization Request Support Document for the Omnibus regulation at pp. 47-50, the Board's determination that the addition of the Omnibus regulation to California's new motor vehicle emissions

¹⁷ 42 U.S.C. § 7543(b)(1).

¹⁸ 44 Fed. Reg. 38,660-38,661 (July 2, 1979) ("[T]he public record did not contain any evidence that this regulation would cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards.").

¹⁹ 74 Fed. Reg. 32,744, 32,749 (July 8, 2009).

²⁰ 74 Fed. Reg. 32,744, 32,749 (July 8, 2009); *MEMA I*, 627 F.2d 1095, 1122.

control program would not cause California's new motor vehicle and engine emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards is neither arbitrary or capricious, given that the Administrator has already determined that California's pre-existing emission standards and accompanying enforcement procedures are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, and because the Omnibus Regulation establishes emission standards and accompanying enforcement procedures that are more stringent than corresponding federal emission standards and accompanying enforcement procedures, and consequently only increases the relative stringency of California's motor vehicle emissions control program compared to the federal motor vehicle emissions control program.

In fact, California's new motor vehicle emission program is more stringent than EPA's in several respects. For example, California's Advanced Clean Trucks standards require that increasing percentages of medium- and heavy-duty trucks sold in California—between 55 percent and 75 percent by Model Year 2035—have zero tailpipe emissions, with California's Advanced Clean Fleets regulation requiring even greater deployment of zero-emission vehicles in the heavy-duty sector. California's long-standing zero-emission standards for *light-duty* vehicles similarly require that increasing percentages of those vehicles sold in California be zero-emission. EPA's program, by contrast, does not require any zero-emission vehicles to be sold (though it likely encourages such sales).²¹ It was therefore far from arbitrary and capricious for California to conclude that a program requiring substantial and increasing numbers of vehicles with no tailpipe emissions at all is at least as protective as EPA's.

Furthermore, as discussed in Section III.B, the 2023 Amendments do not reduce the stringency of the emissions standards, associated test procedures, or accompanying enforcement procedures of the Omnibus regulation, but instead solely provide manufacturers additional compliance options to sell legacy engines during the 2024 through the 2026 MYs, provided manufacturers fully offset the emissions increases resulting from the new compliance options. Manufacturers electing to utilize those compliance options must offset all NOx and PM emissions deficits generated by the sale of legacy engines in California in accordance with the pathways established in the initially adopted Omnibus regulation; *i.e.*, by either obtaining credits from production and sale of zero-emitting HD vehicles, credits derived from the same HDDE combustion-engine averaging set (*i.e.*, producing and selling engines that are cleaner than Omnibus standards), or performing projects that are demonstrated to offset the emissions deficits within five years in disadvantaged communities. Moreover, manufacturers that exceed applicable legacy engine limits must offset the deficits associated with those excess sales by a factor of four. For instance, if a manufacturer's excessive sales of legacy

²¹ CARB's light-duty standards are more stringent than EPA's in other ways as well. For example, EPA's light-duty particulate matter standard phases in more slowly than CARB's, allowing a significant portion of the fleet to meet a standard much laxer than CARB's. EPA also allows manufacturers to count sales of zero-emission-vehicles to comply with fleetwide standards for other pollutants, while CARB phases out that option by Model Year 2030.

engines generate an emissions deficit of 1 mega-gram (Mg) of NO_x, the manufacturer would have to offset an emissions deficit of 4 Mg of NO_x.

Thus, there is no question that the addition of Omnibus regulation, as amended by the 2023 Amendments, to California's new motor vehicle emissions control program will not cause California's new motor vehicle and engine emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards, but will instead only increase the relative stringency of California's motor vehicle emissions control program compared to the federal motor vehicle emissions control program.²² EPA therefore has no basis to deny this waiver request for California's program, including the initial Omnibus regulation, as amended by the 2023 Amendments under the protectiveness criterion, under either the analysis undertaken pursuant to section 209(b)(2) or the aggregate analysis undertaken pursuant to section 209(b)(1).

As discussed below, EPA's recent adoption of the federal Clean Trucks Plan does not affect the Executive Officer's protectiveness determination.

EPA Clean Trucks Plan

On March 28, 2022, EPA proposed the adoption of a Clean Trucks Plan (CTP), which primarily established more stringent criteria-pollutant emission standards for 2027 and subsequent MY HD vehicles.²³ EPA finalized that rulemaking action on March 27, 2023.²⁴

The federal Clean Trucks Plan establishes criteria-pollutant emissions standards and accompanying enforcement procedures for federally certified 2027 and subsequent MY HD vehicles and the HD engines powering those vehicles that are generally equivalent in stringency to the comparable emissions standards and accompanying enforcement provisions of California's Omnibus regulation, as amended by the 2023 Amendments.

EPA's adoption of the federal Clean Trucks Plan does not provide a basis for EPA to find that either the Executive Officer's or the Board's protectiveness determinations are arbitrary or capricious, given that the Omnibus regulation first establishes emission standards for new 2024 through 2026 MY vehicles and engines that are more stringent than the corresponding federal emissions standards.

²² See the Waiver and Authorization Request Support Document for the initial Omnibus regulation, EPA-HQ-OAR-2022-0332-0009, pp. 47-50.

²³ 87 Fed. Reg. 17414 (March 28, 2022).

²⁴ 88 Fed. Reg. 15278 (Mar. 13, 2023). EPA first published the final rule for the federal Clean Trucks Plan on January 24, 2023, announcing that rulemaking action would be effective March 27, 2023. 88 Fed. Reg. 4296 (Jan. 24, 2023). EPA subsequently published a notice in March indicating it was correcting two inadvertent errors in the version of the final rulemaking action published on January 24, 2023. 88 Fed. Reg. 15278 (Mar. 13, 2023).

Furthermore, the emissions standards and accompanying enforcement procedures for 2027 and subsequent MY vehicles and engines established by the federal CTP are generally as stringent as the corresponding standards and accompanying enforcement procedures of the Omnibus regulation, so the federal CTP again provides no basis for a conclusion that California's program is *less* protective than EPA's. Underscoring the point, the federal CTP contains two specific provisions that individually and collectively dilute the stringency of the CTP emissions standards as compared to the corresponding Omnibus emissions standards. These provisions are referred to below as the "interim compliance allowance" and the "temperature adjustment function."

The interim compliance provision²⁵ allows MHDD and HHDD vehicles to emit an additional 15 milligrams of NOx per horsepower-hour over otherwise applicable in-use emissions standards.²⁶ CARB projects that if it fully adopted the interim compliance provision, that action would result in approximately 1.4 tons per day excess NOx emissions on a statewide basis in 2037, compared to a scenario wherein the CTP was aligned with the comparable Omnibus in-use emissions standards.²⁷

The temperature adjustment function²⁸ allows NOx emissions to increase if ambient temperatures are between 5 and 25 °C, i.e., it allows NOx emissions at 5 °C to exceed otherwise applicable emissions standards by nearly 60 percent.²⁹ CARB projects that this provision will generate approximately 6.4 tons per day excess NOx emissions on a statewide basis in 2037, compared to the comparable Omnibus requirements for off-cycle NOx standards.³⁰

On July 5, 2023, CARB reached an agreement with the Truck and Engine Manufacturers Association (EMA), the members of EMA that manufacture HD on-road vehicles and engines, and the Ford Motor Company. That agreement has been referred to as the Clean Truck Partnership (Partnership).³¹ Although the Partnership agreement specifies that CARB staff commits to propose amendments to the Omnibus regulation that would generally align the emissions standards associated test procedures, and accompanying enforcement provisions for 2027 and subsequent MY engines and vehicles with the corresponding provisions in the federal CTP, it further specifies that

²⁵ 40 CFR § 1036.150(y)

²⁶ CARB, Petition for Reconsideration, and in the Alternative, for Rulemaking. Seeking the Amendment of the Rulemaking Entitled "Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards," EPA HQ-OAR-2019-0055, FRL-7615-02-OAR (2023) (hereinafter "Petition") at pp. 18.

²⁷ Petition at pp. 23-24.

²⁸ 40 CFR § 1036.104(a)(3)

²⁹ Petition at p. 8.

³⁰ Id at pp. 8-9, and 23-24.

³¹ Clean Truck Partnership Agreement, available at: https://ww2.arb.ca.gov/sites/default/files/2023-07/Final%20Agreement%20between%20CARB%20and%20EMA%202023_06_27.pdf

such amendments would only include the proposed adoption of modified versions of the interim compliance allowance and temperature adjustment functions, and only for a limited period of time. Furthermore, CARB has not yet approved for adoption those elements of the Partnership agreement, and consequently that aspect of the Partnership agreement does not affect the above-mentioned considerations.³²

For the foregoing reasons, it is clear that the addition of Omnibus regulation, as amended by the 2023 Amendments, to California's new motor vehicle emissions control program will not cause California's new motor vehicle and engine emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards. Rather, the addition of the Omnibus regulation, as amended by the 2023 Amendments, enhances the already greater (and at least equal) level of protectiveness provided by California's program before the addition of the Omnibus regulation.

B. Compelling and Extraordinary Circumstances

The Administrator has consistently recognized that he or she cannot deny a waiver under the second criterion absent a showing that the State no longer has "compelling and extraordinary conditions" and therefore no longer needs its own new motor vehicle and new motor vehicle engine emissions control program. The Administrator has just as consistently recognized that California continues to have "compelling and extraordinary conditions" and to need its own program. As demonstrated below, under this traditional interpretation of this criterion, or under an alternative interpretation of the criterion that considers California's need for particular standards, EPA has no basis to deny this waiver request under this criterion.

1. Traditional Interpretation of Compelling and Extraordinary Criterion

EPA has traditionally interpreted CAA section 209(b)(1)(B) as requiring an inquiry regarding California's need for a separate new motor vehicle and new motor vehicle engine emissions control program, to meet compelling and extraordinary conditions, and not whether any given standard is necessary to meet such conditions.³³ EPA has expressed this as an inquiry into "the existence of 'compelling and extraordinary' conditions' of the kind for which a separate state program of controls remains warranted.³⁴ In other words, "review ... under section 209(b)(1)(B) is not based on

³² CARB will submit a subsequent request for appropriate waiver action upon the completion of all rulemaking actions needed to effectuate the subject amendments to the Omnibus regulation.

³³ 87 Fed. Reg. at 35,767; 80 Fed. Reg. at 76,689.

³⁴ 41 Fed. Reg. at 23,103; see also *id.* at 23,104 (concluding "[c]ompelling and extraordinary conditions continue to exist in the State of California"). See also 41 Fed. Reg. 44,209 44,210 (Oct. 7, 1976) ("[T]he question of whether *these particular standards* are actually required by California all fall within the broad

whether California has demonstrated a need for the particular regulations, but upon whether California needs standards to meet compelling and extraordinary conditions.”^{35,36}

California continues to experience some of the worst air quality in the nation and the South Coast and San Joaquin Valley Air Basins, in particular, continue to be in extreme non-attainment with national ambient air quality standards for ozone and in serious non-attainment with national ambient air quality standards for PM.³⁷ These challenges moved Congress to authorize California to establish separate on-road motor vehicle standards in 1967 and still exist today.³⁸ EPA has long confirmed this remains true.³⁹

Nothing in these conditions has changed to warrant a change in EPA’s confirmation of what the Clean Air Act requires, and therefore there can be no doubt of the continuing existence of compelling and extraordinary conditions justifying California’s need for its own motor vehicle emissions control program.

2. Alternative Interpretation of the Compelling and Extraordinary Criterion

Even if EPA applies a narrower, standards-specific inquiry (as some waiver opponents may argue is required), the record demonstrates that California “needs” the requirements of the Omnibus regulation, as amended by the 2023 Amendments, to address California’s compelling and extraordinary conditions.

area of public policy [left to] California’s judgment ... consistent with the Congressional intent behind the California waiver provision.”).

³⁵ 44 Fed. Reg. at 38,660, 38,661 (July 2, 1979).

³⁶ The Administrator has recognized that even if such a standard by standard test were applied to California, it “would not be applicable to its fullest stringency due to the degree of discretion given to California in dealing with its mobile source pollution problems.” 41 Fed. Reg. 44209, 44213, (October 7, 1976); 49 Fed. Reg. 18887, 18892 (May 3, 1984) (finding Congressional intent precludes EPA from viewing adopted California vehicular particulate matter standard in isolation).

³⁷ 78 Fed. Reg. 2112, 2130 (Jan. 9, 2013); 82 Fed. Reg. 4867, 4871 (Jan. 17, 2017).

³⁸ See 74 Fed. Reg. 32744, 32762-32763 (July 8, 2009); 79 Fed. Reg. 6584, 6588-590 (Feb. 4, 2014); 82 Fed. Reg. 6540, 6543 (Jan. 19, 2017). In 2007, 19 of California’s air quality districts were in nonattainment with the eight-hour ozone 0.08 ppm NAAQs. Currently, 37 California counties are in nonattainment with the 2015 eight-hour ozone 0.070 ppm NAAQs, and 26 of California’s counties are in nonattainment with the 2006 PM 2.5 NAAQs. <https://www3.epa.gov/airquality/greenbook/ancl.html> (last accessed Oct. 28, 2021).

³⁹ *California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption – Notice of Decision*, 70 Fed. Reg. 50322, 50323 (Aug. 26, 2005); 74 Fed. Reg. 32744, 32762-763 (July 9, 2009); 79 Fed. Reg. 46256, 46262 (Aug. 7, 2014); 82 Fed. Reg. 4867, 4871 (Jan. 17, 2017).

The on-road HD vehicles regulated by the Omnibus Regulation are significant sources of harmful air pollutants, especially NO_x and PM,⁴⁰ and constitute the largest source of NO_x emissions in California.⁴¹ California needs to achieve significant reductions of both NO_x and PM to attain the national ambient air quality standards for ozone and PM, and the Omnibus Regulation will achieve approximately half of the NO_x commitments in California's State Implementation Plan.⁴² In addition, NO_x emissions pose serious risks to the health and welfare of Californians, because NO_x emissions not only cause lung irritation and aggravate lung diseases, they also react in the atmosphere to form additional pollutants - ozone and PM, which additionally pose serious risks to the health and environment of Californians, including increased risks of lung and heart diseases and premature death.⁴³ That more than suffices to preclude denial under this criterion.

C. Consistency with Clean Air Act Section 202(a)

Under the third waiver criterion, Section 209(b)(1)(C), EPA may deny a waiver if it finds that the additional or amended standards for which the waiver is requested would render California's new motor vehicle emission program inconsistent with Section 202(a) of the Clean Air Act.⁴⁴ "[I]n the waiver context, section 202(a) relates ... to technological feasibility."⁴⁵ As EPA has long understood, the reference to Section 202(a) in Section 209(b)(1)(C) refers to Section 202(a)(2)'s requirement that EPA's federal standards provide "such period as ... necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period."⁴⁶ Under this long-standing, traditional understanding of the statute, EPA can deny a waiver under Section 209(b)(1)(C) only if "the state's regulations ... provide 'inadequate lead time to permit the development of the technology necessary to implement the new procedures, giving appropriate consideration to the cost of compliance within the time frame.'"⁴⁷

⁴⁰ CARB, Staff Report: Initial Statement of Reasons, Public Hearing to Consider The Proposed Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments (2020) (hereinafter "Omnibus ISOR"), pp. ES 1-2. Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2020/hdomnibuslownox/isor.pdf>

⁴¹ *Ibid.*

⁴² *Id.* at p. ES-2.

⁴³ [Appendix E](#) to Omnibus ISOR, available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2020/hdomnibuslownox/appe.pdf>

⁴⁴ 42 U.S.C. § 7543(b)(1)(C).

⁴⁵ *Motor & Equip. Mfrs. Ass'n v. Nichols*, 142 F.3d 449, 463 (D.C. Cir. 1998) ("*MEMA II*") (internal quotation omitted). In the waiver context, Section 202(a) also relates to federal certification, ensuring "that the Federal and California test procedures do not impose inconsistent certification requirements." *MEMA II*, 142 F.3d at 463. This aspect of the "consistency" criterion is not at issue here.

⁴⁶ 49 Fed. Reg. 18,887-02, 18,892 (May 3, 1984).

⁴⁷ *Id.* at 463 n.13 (quoting 46 Fed. Reg. 26,371-02, 26,372 (May 12, 1981)); see also e.g., 43 Fed. Reg. 25,729 (June 14, 1978); 88 Fed. Reg. 20688, 20705, n. 154 (Apr. 6, 2023).

“The scope of EPA’s review under this criterion is narrow,”⁴⁸ and EPA considers the consistency prong—including the adequacy of lead time provided by California—in the context of the “discretion given to California in dealing with its mobile source pollution problems.”⁴⁹ Indeed, EPA has acknowledged that the feasibility analysis “in the context of a California waiver” is distinct from the feasibility analysis that applies to federal standards under CAA Section 202(a)(2).⁵⁰ EPA has also recognized that its consideration of costs must focus strictly on the costs of compliance because “[t]he appropriate level of cost-effectiveness is a policy decision of California that is considered and made when California adopts the regulations, and EPA, historically, has deferred to these policy decisions.”⁵¹ In addition, “EPA has long held that consistency with section 202(a) does not require that all manufacturers be permitted to sell all motor vehicle models in California.”⁵²

Under EPA’s traditional approach (which, as explained below, should not be altered by importation of Section 202(a)(3)’s requirements), “the question for the Administrator is,” simply, “whether the manufacturers’ current and projected capabilities permit them to meet” the requirements of CARB’s program.⁵³ “[I]t is not required that the requisite technology be developed at present, but rather that the available lead time appear to be sufficient to permit the development and application of that technology.”⁵⁴ The burden to show that lead time is insufficient, that compliance costs will be excessive, or that the standards will otherwise render California’s program infeasible is on those opposing the waiver request.⁵⁵

As EPA has recognized, this waiver inquiry, like the other two, concerns California’s whole program.⁵⁶ As demonstrated below, the requirements for new engines and vehicles established by initial Omnibus Regulation, as amended by the 2023

⁴⁸ 78 Fed. Reg. 2,112, 2,132 (Jan. 9, 2013).

⁴⁹ 49 Fed. Reg. 18,887-02, 18,892 (May 3, 1984); see also 78 Fed. Reg. 2,112, 2,133 (Jan. 9, 2013).

⁵⁰ 49 Fed. Reg. 18,887-02, 18,892 (May 3, 1984) (recognizing that a feasibility test applicable to EPA under Section 202(a) either would not apply to California or “would not be applicable to its fullest stringency”).

⁵¹ 78 Fed. Reg. 2,112, 2,134 (Jan. 9, 2013).

⁵² *Id.* (describing waivers granted despite limitations on sales of certain vehicles).

⁵³ *MEMA I*, 627 F.2d at 1126.

⁵⁴ 43 Fed. Reg. 25,729, 25,731 (June 14, 1978).

⁵⁵ *MEMA I*, 627 F.2d at 1121; see also e.g., 58 Fed. Reg. 4,166 (Jan. 13, 1993) (“Information presented to me by parties opposing California’s waiver request did not satisfy the burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs.”); 79 Fed. Reg. 46,256, 46,263 (Aug. 7, 2014) (“OOIDA does not submit sufficient evidence to meet the opponents’ burden of proof to show that the costs of compliance with the HD GHG Regulations are so excessive as to constitute technological infeasibility.”).

⁵⁶ 88 Fed. Reg. 20706 (Apr. 6, 2023).

Amendments, satisfy these requirements, and therefore their addition to California's program will not alter that program's already-determined consistency with section 202(a) of the CAA.

1. Technological Feasibility, Lead Time, and Costs

CARB has previously demonstrated that the emissions standards and accompanying enforcement procedures established by the initial Omnibus regulation are technically feasible, considering the costs of compliance because "the technologies that manufacturers will likely use to comply with the 2024 MY emission standards are presently commercially available at reasonable costs within the specified lead times,"⁵⁷ that "manufacturers will have sufficient time to develop and implement future technologies or to refine existing emission control technologies needed to comply with the 2027 and subsequent MY emission standards",⁵⁸ and that "the incremental lifetime costs associated with all elements of the Regulation constitute a small fraction of the purchase prices of new engines and vehicles."⁵⁹

On March 1 and March 6, 2023, Cummins and the Truck and Engine Manufacturers Association (EMA), respectively, submitted supplemental letters to EPA objecting to CARB's waiver request for the Omnibus regulation on the grounds that the Omnibus waiver request regulation should be denied under Sections 209(b)(1)(C) due to alleged technical feasibility issues, inadequacy of lead time, and costs of compliance of the emissions standards and accompanying enforcement procedures established by the Omnibus regulation.⁶⁰ On March 10, 2023, CARB requested that EPA defer acting on the Omnibus waiver so it could work with industry and other stakeholders to review those late comments and to provide an appropriate response to EMA and Cummins' late comments.

CARB has successfully resolved the concerns expressed by Cummins and EMA, as evidenced by the fact that both Cummins and EMA have requested that EPA withdraw

⁵⁷ CARB, Waiver and Authorization Support Document for the Initial Omnibus regulation, p. 53.

⁵⁸ *Ibid.*

⁵⁹ *Id.* at p. 71.

⁶⁰ Cummins submitted its letter on March 1, 2023 [EPA-HQ-OAR-2022-0332-0089] and [EPA-HQ-OAR-2022-0332-0090], and EMA submitted its letter on March 6, 2023 [EPA-HQ-OAR-2022-0332-0091]

their submissions dated March 1 and March 6, 2023, respectively.^{61,62} Furthermore, as previously discussed in Section V.A, CARB reached an agreement with EMA, the members of EMA that manufacture on-road HD vehicles and engines, and the Ford Motor Company referred to as the Clean Truck Partnership. As part of the Partnership agreement, EMA's members and the Ford Motor Company committed 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. EMA, its members, and the Ford Motor Company also agreed not to challenge CARB's issuance of the Omnibus regulation or challenge any EPA waiver issued for the Omnibus regulation, underscoring that they do not plan to contend the regulation will render California's program inconsistent with Section 202(a).

As explained in this document, the 2023 Amendments present no issues that adversely affect the technical feasibility, lead time, or costs of compliance of the Omnibus regulation; rather, they provide manufacturers the option to produce and sell greater numbers of new engines that demonstrate compliance with preexisting emissions standards (i.e., 0.2 g NOx/bhp-hr) that EPA has previously determined are not inconsistent with CAA section 202(a)(2).⁶³

With respect to costs, CARB anticipates that the 2023 Amendments will be cost neutral to manufacturers, because any savings manufacturers may generate in producing and selling legacy engines in lieu of Omnibus compliant engines will be offset by costs associated with generating or purchasing sufficient emissions credits, or implementing

⁶¹ Cummins expressed that it was retracting its March 1, 2023 letter in a letter dated May 26, 2023 [EPA-HQ-OAR-2022-0332-0094].

In its May 26, 2023 letter, Cummins states, in pertinent part, that “[s]ince Cummins’ earlier docket submission, ID No. EPA-HQ-OAR-2022-0332-0089, CARB, the Truck and Engine Manufacturers Association, and Cummins have agreed that implementation of CARB proposed measures to provide Cummins and other engine manufacturers additional compliance flexibilities under the Omnibus regulation, will minimize concerns without decreasing CARB’s projected emissions reductions from the Omnibus regulation or our projected compliance costs. Cummins no longer anticipates the Omnibus regulation will cause major disruptions to product availability in California.

Therefore, Cummins wishes to withdraw its letter ID No. EPA-HQ-OAR-2022-0332-0089.”

⁶² EMA expressed that it was withdrawing its March 6, 2023 in a letter dated letter on March dated March 31, 2023 [EPA-HQ-OAR-2022-0332-0093].

In its March 31, 2023 letter, EMA states, in pertinent part, that “due to EMA’s evolving understanding regarding the availability of new trucks capable of meeting California’s “Omnibus” HDOH emission standards in model years 2024-2026, EMA hereby withdraws its supplemental submission, dated March 6, 2023.”

⁶³ 70 Fed. Reg. 50322 (Aug. 26, 2005).

projects in disadvantaged communities needed to offset the emissions increases resulting from the legacy engines.

Furthermore, CARB received no comments challenging the technical feasibility of the 2023 Amendments during the rulemaking action for the 2023 Amendments.

CARB accordingly submits that EPA has no basis to support a finding that the emissions standards established by the initial Omnibus regulation, as amended by the 2023 Amendments, are technologically infeasible, considering the cost of compliance within the lead time provided.

a. Lead Time Comments Received During Rulemaking Action

During the initial Omnibus regulation's rulemaking action, some commenters asserted that CARB would not be able to obtain a waiver pursuant to section 209(b)(1)(C) of the CAA because the Omnibus regulation does not provide manufacturers the four years of lead time specified by section 202(a)(3)(C) of the CAA.

Section 202(a)(3)(C) of the CAA requires that in adopting emissions standards for HD vehicles or HD engines, EPA's Administrator must provide specified periods of lead time and stability:

Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

As EPA correctly concluded in granting the waiver California requested in light of the addition of the Advanced Clean Trucks (ACT) regulation to the State's program, those commenters' claims are incorrect, and do not preclude a finding that the emissions standards promulgated by the Omnibus regulation are consistent with section 202(a) within the meaning of section 209(b)(1)(C). In granting CARB the waiver for the ACT regulation EPA confirmed that it did not interpret section 209(b)(1)(C) as requiring California to identically conform with every provision of section 202(a),⁶⁴ determined that the text, legislative history, and statutory context of relevant provisions of CAA section 202(a)(3)(C) only applies to federal standards promulgated under section 202(a)(3)(A) "and is therefore not relevant to California's program,"⁶⁵ and stated that its historical approach to section 209(b)(1)(C) and section 209(e)(2)(A)(iii) "reflects the best reading of the statute."⁶⁶

⁶⁴ 88 Fed. Reg. 20713 (Apr. 6, 2023)

⁶⁵ Ibid. – [88 Fed. Reg. 20713 (Apr. 6, 2023)]. See also 88 Fed. Reg. 20711 – 20723.

⁶⁶ 88 Fed. Reg. 20,723.

2. Test Procedure Consistency

CARB is not aware of any instances in which a manufacturer is precluded from conducting one set of tests on a medium-duty or HD engine or vehicle to determine compliance with both California and federal requirements. The Omnibus regulation establishes emissions standards and associated test procedures that only apply to California-certified medium and HD engines and vehicles, but those California-specific requirements do not preclude a manufacturer from complying with both California and federal test requirements with one test engine or vehicle.⁶⁷ The 2023 Amendments allow manufacturers to produce limited quantities of engines that do not meet the emissions standards established by the initial Omnibus regulation, and also do not preclude a manufacturer from demonstrating compliance with both California and federal test requirements with one test engine or vehicle.

VI. CONCLUSION

Based on the foregoing, CARB respectfully requests that the Administrator grant California's requests for the waiver actions as described in this document pursuant to CAA section 209.

CARB Contacts:

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Reference Materials from Omnibus Rulemaking

1. Resolution 23-15
<https://ww2.arb.ca.gov/sites/default/files/barcu/board/res/2023/res23-15.pdf>
2. Notice of Public Hearing
<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/notice.pdf>

⁶⁷ Even where there is incompatibility between the California and federal test procedures, EPA has granted a waiver under circumstances where EPA accepts a demonstration of federal compliance based on California test results, thus obviating the need for two separate tests. (43 Fed. Reg. 1829, 1830 (Jan. 12, 1978); 40 Fed. Reg. 30311, 30314 (July 18, 1975).).

3. Staff Report: Initial Statement of Reasons for Proposed Rulemaking dated August 1, 2023
<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/isor.pdf>
- 3a. Appendix A-1: Proposed Regulation Order
<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/appa-1.pdf>
- 3b. Appendix A-2: Proposed Regulation Order (Alternative Format to Appendix A-1)
[appa-2.docx \(live.com\)](#)
- 3c. Appendix B-1: Proposed Modifications to the Diesel Engine Test Procedures
<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/appb-1.pdf>
- 3d. Appendix B-2: Proposed Modifications to the Diesel Engine Test Procedures (Alternative Format to Appendix B-1)
[appb-2.docx \(live.com\)](#)
- 3e. Appendix C: Purpose and Rationale for Each Regulatory Provision
<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/appc.pdf>
4. Notice of Executive Officer Hearing
https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/eo_notice.pdf
5. Transcript of October 20, 2023 Executive Officer Hearing, agenda item number 23-10-20
<https://ww2.arb.ca.gov/sites/default/files/barcu/board/mt/2023/mt102023.pdf>
6. Notice of Public Availability of Modified Text, posted December 6, 2023
<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/15daynotice.pdf>
- 7a. Appendix A-1: Proposed 15-Day Changes to Regulation Order
https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/15day_appa-1.pdf
- 7b. Appendix A-2: Proposed 15-Day Changes to Regulation Order (Alternate Format to Appendix A-1)
[15day_appa-2.docx \(live.com\)](#)

- 7c. Appendix A-3: Proposed 15-Day Changes to Regulation Order (Alternate Version)
[15day_appa-3.docx \(live.com\)](#)
- 7d. Appendix B-1: Proposed 15-Day Changes to the Diesel Engine Test Procedures
https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/15day_appb-1.pdf
- 7e. Appendix B-2: Proposed 15-Day Changes to the Diesel Engine Test Procedures (Alternate Format to Appendix B-1)
[15day_appb-2.docx \(live.com\)](#)
- 7f. Appendix B-3: Proposed 15-Day Changes to the Diesel Engine Test Procedures (Alternate Version)
[15day_appb-3.docx \(live.com\)](#)
- 7g. Appendix C-1: Proposed 15-Day Changes to the Otto-Cycle Engine Test Procedures
https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/15day_appc-1.pdf
- 7h. Appendix C-2: Proposed 15-Day Changes to the Otto-Cycle Engine Test Procedures (Alternate Format to Appendix C-1)
[15day_appc-2.docx \(live.com\)](#)
- 8. Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Responses
https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/hdomnibus_fsor.pdf
- 8a. Addendum to Final Statement of Reasons
https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/addendum_fsor.pdf
- 9. Executive Order R-23-006, posted December 28, 2023
https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/exec_order.pdf
- 10. Final Regulation Order
https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/fro_a_tta-1.pdf
- 11. Final Diesel Engine Test Procedures

https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/dies-el-tp_attb-1.pdf

12. Final Otto-Cycle Engine Test Procedures
https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/otto-tp_attc-1.pdf
13. Request for Early Effective Date
https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/hdomnibus_reed.pdf
14. Fully endorsed STD 400 face sheet as approved by OAL and filed with the Secretary of State on May 31, 2024.