

Timothy French

The Truck and Engine Manufacturers Association (EMA) hereby submits the attached comments relating to the proposal that the Washington Department of Ecology has made to revise Washington's Clean Vehicles Program (Chapter 173-423 WAC).

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

Proposed Revisions to Chapter 173-423) Comment Deadline: August 13, 2026
WAC; Washington's Clean Vehicles) Public Hearing Date: August 4, 2026
Program)

**COMMENTS OF THE
TRUCK AND ENGINE MANUFACTURERS ASSOCIATION**

August 13, 2026

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Introduction

The Truck and Engine Manufacturers Association (“EMA”) opposes the proposal that the Washington Department of Ecology (“DOE”) has made to revise Washington’s Clean Vehicles Program (see Chapter 173-423 WAC) to align with emergency and permanent regulation that the California Air Resources Board (“CARB”) has adopted (or is proposing to adopt) in an attempt to resurrect the medium-duty and heavy-duty (“MHD”) engine and vehicle emission standards that were in effect before the implementation of CARB’s Omnibus Low-NOx (“Omnibus”) regulations, which regulations were nullified on June 12, 2025, pursuant to legislation adopted under the Congressional Review Act (“CRA”). As explained below, the DOE’s attempt to reinstate the CARB MHD emission control regulations that preceded the federally-voided Omnibus regulations is preempted by and violative of federal law, and so should not be approved. The DOE’s proposal also is adverse to public health, since the antecedent MHD NOx standards at issue (0.20 g/bhp-hr) are nearly 6-times higher than the federal NOx standard (0.035 g/bhp-hr) that otherwise will take effect in Washington State starting on January 1, 2027, if the DOE abandons this unlawful rulemaking.

EMA is the trade association that represents the world’s leading manufacturers of the MHD engines and vehicles covered by the DOE’s proposal. As explained below, the DOE’s attempt to follow CARB’s lead to try to resuscitate and amend certain MHD emission standards that were “antecedent” to the Congressionally-nullified Omnibus standards is expressly preempted under the federal Clean Air Act (“CAA”), 42 U.S.C. sections 7401, *et seq.*, and contrary to the public interest.

**Congressional Review Act Legislation Has Preempted and Curtailed
CARB’s Regulatory Authority Over MHD Engines and Vehicles**

The DOE’s proposal is Washington’s version of CARB’s attempt to evade the consequences of the CRA legislation that the President signed into law on June 12, 2025, and that expressly disapproved and voided the prior federal preemption waiver that EPA had issued for the Omnibus regulations. Pursuant to that CRA legislation, the Omnibus regulations have been nullified and, going forward, EPA is prohibited from granting any future preemption waivers for any CARB regulations that are “substantially the same” as the now-voided Omnibus rules. See H.J. Res. 89, Pub. L. No. 119-17.

Despite the CRA legislation’s constraints on CARB’s regulatory authority over mobile sources, CARB has sought to (i) implement an amended blend of the MHD emission standards and requirements that CARB says were “antecedent” to the Omnibus regulations; and (ii) reserve

a purported right to enforce retroactively the CRA-voided Omnibus rules against manufacturers who comply with the reawakened antecedent standards, in the event CARB succeeds in its ongoing litigation effort to overturn the CRA legislation. (*California, et. al. v. United States, et al.*, No. 4:25-cv-04966 (N.D. Cal. Filed June 12, 2025.))

CARB's efforts to resurrect its lapsed and since superseded MHD standards are fundamentally flawed and unlawful. The CRA legislation expressly curtailed CARB's regulatory authority, such that both the Omnibus regulations as well as the revised "antecedent" standards at issue are expressly preempted. See Presidential Signing Statement for Joint Resolutions, June 12, 2025; see also 42 U.S.C. §§ 7543(a)-(b). In that regard, there is no "extant" waiver in place for any pre-Omnibus standards. Any such waiver lapsed years ago.

CARB (and now DOE) is attempting to ignore the force and effect of the CRA legislation, and is revising its MHD emission regulations to allow for the implementation of the expired antecedent MHD engine and vehicle emission standards "in parallel" with the nullified Omnibus standards, purportedly until the litigation CARB initiated challenging the CRA legislation is fully resolved. In the interim, CARB has stated that "both sets of standards [the Omnibus standards and the new mix of amended antecedent standards] will be present in the California Code of Regulations." (Original ISOR, Appendix G, p.11; Public Notice, March 6, 2026, p.2.)

Here, the DOE proposes to do likewise. But, under the federal Clean Air Act (CAA), CARB cannot implement or enforce a new set of previously-lapsed and amended "antecedent" standards without first obtaining a new preemption waiver or a "within the scope" determination from EPA. See 42 U.S.C. §7543. And it is clear that CARB does not intend to seek or obtain such a waiver any time soon. Similarly, under CAA section 177 (42 U.S.C. §7507), the DOE cannot "opt-in" to any CARB regulations for which a preemption waiver is not in effect.

Significantly, U.S. EPA's Assistant Administrator has directly informed CARB that its efforts to revive any so-called "antecedent" MHD emission standards are unlawful unless CARB first receives a new preemption waiver from EPA. More specifically, in correspondence sent to CARB's Executive Officer on September 27, 2025, EPA stated as follows:

EPA expects that CARB will submit any presumptively final regulation resulting from the emergency rulemaking to the Agency **before adopting or attempting to enforce** any new or amended standard applicable to new motor vehicles or engines. Until and unless EPA waives preemption for any such new or amended standard under CAA section 209(b), **no such standard may have legal force or effect.**

EPA also is deeply troubled by recent statements from CARB, including in the proposed rule materials, that there is "uncertainty" regarding the status of CARB's . . . "Omnibus" Low NOx regulations. There is no uncertainty that, as a consequence of bipartisan Congressional Review Act (CRA) resolutions enacted into law on June 10, 2025, **EPA's prior waivers for those provisions have no force and effect and the provisions are therefore preempted by CAA section 209(a).** Nor is there uncertainty that, as a further consequence of the bipartisan CRA resolutions, **EPA is barred from waiving preemption for any standard that is**

“substantially the same” as those in the . . . Omnibus Low NOx regulations. 5 U.S.C. § 801(b)(2).

Thus, **CARB may not continue to enforce or require certification of preexisting regulations** unless the standards therein were submitted to EPA and are the subject of an extant EPA waiver rule under CAA section 209(b). Further, **even if a preexisting regulation previously obtained a waiver, such waiver is no longer extant if the regulation became ineffective at any time**, whether through the passage of time, repeal, or by any other means.

If CARB wishes to adopt new or amended standards in this rulemaking that differ in any way from provisions already subject to an extant preemption waiver, **CARB must submit a new waiver request and receive a waiver from EPA under CAA section 209(b) before CARB can adopt or attempt to enforce any such standard. This includes adding standards in any new sections of the California Code of Regulations, or combining standards in regulations that were previously separate, or applying standards to different model years. Any such regulation cannot be finalized or enforced**, including by requiring certification, until after submission to and review by EPA. (Emphasis added.)

The foregoing makes clear that CARB’s attempt to reinstate lapsed pre-Omnibus MHD emission standards is federally preempted and unlawful. CARB’s purported “antecedent” standards cannot be resurrected because they lapsed years ago and would now be applied in different ways to different model years of engines and vehicles, which requires a new preemption waiver that CARB knows it likely cannot obtain. Simply stated, CARB’s attempted regulatory amendments, just like those proposed by DOE in this rulemaking, conflict with the applicable provisions of the CAA and so are unlawful because: (i) CARB needs to obtain a new preemption waiver from U.S. EPA *before* adopting or attempting to enforce any purportedly revived and amended set of emission standards for new HDOH trucks and engines, and (ii) CARB also needs to provide at least four years of leadtime *before* attempting to enforce those revised emission standards. The proposed amendments fail to satisfy either of those federal mandates. As such, there is no CAA-authorized CARB regulation for the DOE to try to adopt.

CARB (and now DOE) also is claiming enforcement authority it does not have. CARB purports to reserve the right to retroactively enforce the Omnibus regulations, notwithstanding that a key component of the regulatory amendments at issue is to provide an authorized alternative compliance pathway that includes a new blended version of prior standards. For its part, DOE’s proposed sections 173-423-075(2) and 173-423-081(2) provide that manufacturers may comply with the MHD emission standards the preceded the Omnibus standards “unless and until a court of competent jurisdiction issues a final ruling that the [CRA Resolutions] are invalid,” at which time “the regulated parties *are* subject to [the reinstated Omnibus standards].” This language – “are subject to,” not “will be subject to” – leaves open the prospect of retroactive enforcement of the Omnibus standards if the CRA legislation is overturned.

There is no lawful basis for any retroactive enforcement of regulations that, as things stand, have been and are expressly preempted by federal law. To the contrary, DOE has no authority to punish manufacturers for utilizing an alternative compliance pathway that the DOE is taking

regulatory steps to provide. Similarly, DOE has no authority to fine manufacturers for having failed to comply with regulations that were no longer in effect at the time.

**The CARB Amendments That The DOE Seeks To Copy
Are In Direct Conflict With The Clean Air Act**

A. CARB's Proposal is Unenforceable Without a Waiver

The lapsed pre-Omnibus standards that CARB (and now DOE) is attempting to reinstate and impose on future model year MHD engine and vehicles amount to a combination of parts of earlier MHD regulations for which CARB had received (years ago) now-superseded preemption waivers. But the result of CARB's efforts would be the implementation and enforcement of a new mix of earlier standards for which there is no currently operative preemption waiver, which violates section 209(a) of the CAA. 42 U.S.C. §7543(a). That CAA provision states that, in the absence of a preemption waiver from EPA, CARB is not authorized to "adopt or attempt to enforce any standard relating to the control of emissions...or require certification ... as condition precedent to the initial retail sale." As a consequence, this DOE rulemaking is similarly preempted because it attempts to adopt and enforce a revised and amended mix of CARB MHD standards without first having a new EPA preemption waiver in place, or a determination from EPA that the new set of emission standards is "within the scope" of a previously granted waiver. CAA section 177 prohibits that.

CARB has attempted to rely on prior waivers from EPA as justification for adopting and enforcing its new amended mix of lapsed emission standards. However, given the intervening regulatory changes and the proposed inclusion of the "antecedent" standards as entirely new sections and new language in the California Code of Regulations (CCR), reliance on since-superseded waivers is both improper and insufficient. CARB's characterization of the MHD standards at issue as "earlier-adopted standards, which have extant preemption waivers not subject to the recent congressional resolutions" (CARB Original Notice, at 2-3), is inaccurate and does not relieve CARB of the obligation to obtain a new CAA waiver or "within the scope" determination. Indeed, in its own Public Notice for its original "emergency" action (at p.1), CARB conceded that the Proposal will "***amend*** California Code of Regulations, titles 13 and 17, and ***adopt new sections*** into California Code of Regulations, titles 13 and 17." (emphasis added). And in the prior rulemaking, CARB admitted that it was "proposing to ***amend*** its medium- and heavy-duty regulations to clarify that the [previously-lapsed] pre-Omnibus provision remain operative." (ISOR, Appendix G, p. 11, emphasis added.) Therefore, this is a rulemaking to adopt and enforce a new amended set of alternative MHD emission standards set forth in new or amended sections of the operative regulations, which requires a new preemption waiver that CARB does not have. EPA has said just that in its September 27th comment letter to CARB, quoted above.

Describing new regulatory sections and new amended regulatory language as "earlier-adopted standards" does not reflect the truth or the reality that regulated manufacturers are facing. Until now, the proposed new mix of revised "antecedent" standards was not contained anywhere in the relevant codes of regulations, and MHD engine and vehicle manufacturers had no way to ascertain that those earlier lapsed MHD emissions standards could ever apply to current MY products or to future model years. From that perspective, implementation of the so-called

antecedent standards is a clear “adoption” and attempted “enforcement” of a new set of emissions standards for new model years that requires a new preemption waiver from EPA.

Illustrating this point, the revised standards that the DOE seeks to incorporate by reference do not simply reverse the regulatory changes and CCR additions effectuated through CARB’s now-nullified Omnibus rulemakings. See CARB, Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments (OAL Approval Dec. 21, 2022).¹ For example, the original Omnibus regulations changed CCR, title 13, section 1956.8 to remove language that applied the prior tailpipe emissions standards to “2007 and subsequent” model years, as shown in the table below:

Exhaust Emission Standards for 2004 and Subsequent Through 2023 Model Heavy-Duty Engines, and Optional, Reduced Emission Standards for 2002 and Subsequent Through 2023 Model Heavy-Duty Engines Produced Beginning October 1, 2002, Other than Urban Bus Model-Year Engines Produced From October 1, 2002 Through 2006²
(grams per brake horsepower-hour [g/bhp-hr])

Model Year	Oxides of Nitrogen Plus Non-methane Hydrocarbons	Optional Oxides of Nitrogen Plus Non-methane Hydrocarbons	Oxides of Nitrogen	Optional Oxides of Nitrogen	Non-methane hydrocarbons	Carbon Monoxide	Particulates
2004-2006 ^H	2.4 ^{A,C,E,J}	2.5 ^{B,C,E,J}	n/a		n/a	15.5	0.10 ^C
October 1, 2002-2006	n/a	1.8 to 0.3 ^{A,D,F}	n/a		n/a	15.5	0.03 to 0.01 ^G
2007 and subsequent-2023 ^M	n/a	n/a	0.20 ^I		0.14	15.5	0.01 ^K
2015 and Subsequent-2021 (Optional) ^{N,O}	n/a	n/a	n/a	0.10, 0.05, or 0.02	0.14	15.5	0.01
2022-2023 (Optional) ^{N,O}	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>0.10, 0.05, 0.02, or 0.01</u>	<u>0.14</u>	<u>15.5</u>	<u>0.01</u>

CARB, Title 13 Final Regulation Order (Date of Hearing: Aug. 27, 2020), at 5.²

Here, the underlying CARB regulation does not simply “undo” those Omnibus-implemented strike-outs to restore the prior version of CCR, title 13, section 1956.8. Rather, CARB is implementing new and separate regulatory sections with a new mix of MHD emissions standards applicable to current and future model year MHD engines. The new sections and amended regulatory language presented in Appendix A-1-2 to CARB’s initially adopted “emergency” regulation are not a mere replica of a prior rule that was subject to a prior EPA waiver. Instead, the amendments at issue seek to codify a new mix of emissions standards and requirements made up from various regulatory provisions covered by separate, defunct prior waivers granted over a twelve-year period. For example, the new replacement standards include a 2005 diesel tailpipe emissions standard, a 2010 gasoline tailpipe emissions standard, and 2013 on-board diagnostic standards (see Notice at 5 n.7, 9)—all applied immediately—without any leadtime—to current and future model year MHD vehicles and engines. No such blended MHD engine standards has ever existed before. Consequently, CARB and DOE are proposing to implement a new,

¹ Available at <https://ww2.arb.ca.gov/rulemaking/2020/hdomnibuslownox>.

² Available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2020/hdomnibuslownox/froa-1.pdf>.

amended set of mixed emissions standards, which requires a new EPA waiver or authorization under CAA section 209(b).

Even if this rulemaking were as simple as CARB and now DOE have tried to say (which it is not), “restoring” prior emissions standards to apply them to the current and subsequent model years violates federal law, because that similarly creates new MHD regulations without a waiver.

Any argument that this is not a “new” adoption and enforcement of amended standards because the prior standards originally had an indefinite duration (i.e., applicable to “2007 and subsequent” model years) is belied by the fact that, as shown in the table above, the Omnibus regulations *eliminated* the open-ended language applying the antecedent standards to all subsequent model years. See *supra* notes 1 and 2. The antecedent standards therefore ceased to be indefinitely applicable in 2021 and expressly lapsed after the 2023 MY when CARB specifically “sunset” those prior standards. Thus, any attempt to amend and reinstate those expired standards so that they apply to current and future model years necessarily *amends* the emission standards applicable for this model year and subsequent model years, which again requires a new preemption waiver.

In sum, any attempted implementation of CARB’s new blend of amended “antecedent” MHD emission standards requires a new preemption waiver or “within the scope” determination from EPA. In the absence of such a waiver, as EPA itself has explained to CARB, the replacement standards that the DOE seeks to opt-in to violate federal law and cannot be adopted, enacted or enforced.

B. CARB Is Preempted From Even Adopting the Antecedent Standards

Importantly, the express preemption at issue not only precludes any attempt by CARB and DOE to *enforce* lapsed and amended regulations before receiving a preemption waiver from EPA, it also preempts CARB and DOE from *adopting* any such regulations in the absence of a preemption waiver. While heretofore CARB’s practice of adopting MHD regulations before seeking a preemption waiver did not draw legal challenges – in part because CARB’s MHD regulations largely mirrored EPA’s – that is no longer the case, such that CARB’s past practice of adopting regulations *prior to* seeking preemption waivers can no longer stand. Past habitual violations of CAA section 209(a) are not a valid justification for continuing and future violations of the CAA’s preemption provisions.

The first element of the CAA’s express preemption provision provides that – no state “shall *adopt*” any mobile source standards without a prior preemption waiver. (42 U.S.C. §7543(a).) Requiring compliance with that element of the CAA’s preemption provisions is not just an exercise in statutory formality. Rather, it is necessary to prevent an increasingly abusive and prejudicial practice that has, in effect, nullified the preempted waiver process and deprived truck and engine manufacturers of the leadtime to which they are statutorily entitled under CAA section 202(a)(3)(c).

In the past, CARB’s practice has been to present proposed MHD emission control regulations to its Board for adoption before submitting any application to EPA for a preemption waiver. CARB’s practice also has been to consider the date of a Board resolution approving a

proposed MHD regulation to be the “effective date” of that regulation, and thus the start of the regulatory leadtime clock under the CAA. That practice was and is unlawful and has created increasingly unfair and untenable results for manufacturers.

More specifically, CARB often waits months or years after the Board adopts a MHD regulation before it submits the necessary preemption waiver application to EPA. Then, EPA may take years before acting on a preemption waiver application. The result is that EPA’s ultimate issuance of a preemption waiver (or not) can come on the eve of or even after a CARB MHD regulation has gone into effect for a given model year of production. Under that past practice, then, there was really no leadtime at all between an EPA waiver determination and the full enforcement of the CARB MHD regulation at issue.

The practical impact of this process has been that manufacturers are forced to assume that any Board-approved MHD regulation is valid and covered by a preemption waiver that EPA might issue years in the future. If manufacturers assumed otherwise, they ran the real risk of having no time to comply if and when EPA issued a preemption waiver years later. Thus, CARB’s historical practice of not seeking a preemption waiver for its MHD regulations before formally adopting them in effect nullified the whole preemption waiver process. Manufacturers could not afford to wait for the preemption waiver process to play out because, according to CARB, their leadtime would start to run before the waiver process even began, and because that process likely would not be completed until the dates of compliance with the CARB regulations at issue had already arrived.

Under CARB’s practice, by the time EPA issued any preemption waiver decision, the MHD regulation already would have been implemented, and manufacturers already would have been under an obligation to comply. As a consequence, manufacturers have been compelled to prepare to comply with CARB’s MHD regulations starting from the date of adoption by the CARB Board, because the subsequent waiver process likely would not conclude in time to provide manufacturers with the certainty needed to forestall their compliance efforts. These actions render the waiver process a nullity in violation of CAA section 209(a).

Significantly, however, the United States and EPA have come to realize and acknowledge just how abusive CARB’s preemption waiver practice has become, and are advising both CARB (through the letter cited above) and the courts of the need for CARB to seek a preemption waiver *before adopting* any mobile source emission regulations. For example, in a brief filed last year with the United States District Court for the Eastern District of California, the United States explained how and why the CAA requires CARB to obtain a preemption waiver not only before enforcing the MHD regulations at issue, but also *before adopting* them. That thorough explanation is repeated below.

Finding it more convenient to beg forgiveness than ask permission, California thinks it can adopt emissions standards without a waiver, so long as the State obtains a waiver before enforcing them. Not so. The Clean Air Act unequivocally provides that no state shall “adopt or attempt to enforce” emissions standards for new motor vehicles. 42 U.S.C. § 7543(a). The use of the disjunctive “or” in section 209(a) means that these prohibitions on adopting and enforcing are independent and discrete from each other unless statutory context demands otherwise. *See Campos-Chaves v. Garland*, 602 U.S. 447, 457 (2024). Nothing in section 209 or elsewhere

in the Clean Air Act supports an argument that adopting preempted emissions standards becomes unlawful only if a state attempts to enforce them without a preemption waiver. And where the text is clear, the interpretive inquiry ends. *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 127 (2018).

Beyond the plain text prohibiting California from adopting [MHD regulations] before obtaining a waiver, “the structure of the statute as a whole, including its object and policy,” show that the [MHD regulation] was unlawful *ab initio* because it lacks a preemption waiver. *Consejo de Desarrollo Economico de Mexicali, A.C. v. United States*, 482 F.3d 1157, 1168 (9th Cir. 2007). Congress knows how to authorize states to adopt regulations and seek EPA approval later. For the Clean Air Act Title I stationary source program, for example, Congress directed states to “adopt and submit” state implementation plans for EPA review to achieve applicable air quality standards. 42 U.S.C. § 7410(a). The adopt first, seek approval later procedure makes sense for Title I’s cooperative federalism model where the states are charged with the responsibility to implement, maintain, and enforce federal air quality standards. *Ohio v. EPA*, 603 U.S. 279, 283 (2024).

In contrast, the Title II prohibition on adopting new motor vehicle emissions standards without an EPA preemption waiver reflects Congress’s choice of uniformity absent a preemption waiver. 42 U.S.C. § 7543(a)-(b); *Motor Vehicle Mfrs.*, 17 F.3d at 526. For a program that requires national uniformity absent a waiver, it makes sense for California to seek a waiver before formally adopting emission standards. And Congress’s policy choice is mirrored in section 209(a)’s clear text requiring an EPA waiver before California can adopt new motor vehicle emissions standards. 42 U.S.C. § 7543(a)-(b).

In the past, EPA allowed California to adopt new motor vehicle emissions standards and then seek a waiver later. *See* 88 Fed. Reg. 20688 (Apr. 6, 2023). But after *Loper Bright Enterprises v. Raimondo*, what matters is the best interpretation of the statute, not what EPA has done (or said) before. 603 U.S. 369, 412-13 (2024). The best interpretation of section 209 is what its plain text requires: California may not *adopt* new motor vehicle emissions standards without obtaining an EPA preemption waiver first. 42 U.S.C. § 7543(a).

Brief of the United States in Opposition to CARB’s Motion to Dismiss, pp. 7-10; Case No. 2:25-cv-02255 (E.D. Cal).

The bottom line is that CARB’s adoption of antecedent standards prior to seeking and receiving the necessary preemption waiver from EPA is a clear violation of the CAA, which again precludes the DOE from proceeding with this rulemaking

C. The Proposed Amendments Cannot Satisfy the CAA Section 209(b) Waiver Criteria

The proposed regulatory amendments are also invalid because they cannot satisfy the criteria for a preemption waiver under the CAA. Among other things, CAA sections 202 and 209 require CARB to provide at least four years of leadtime before enforcing any new set of MHD

emission standards. See 42 U.S.C. §§ 7543(b)(1)(C), 7521(a)(3)(C). In this case, however, CARB has provided *no leadtime whatsoever*. CARB maintains that the amended “antecedent” standards became immediately effective on September 22, 2025 “upon the original filing with OAL.” The lack of any leadtime precludes EPA from issuing any preemption waiver in this case, even if CARB were to seek one.

In addition, EPA will only consider CARB’s amendments to previously approved emission standards to be “within the scope of a previously granted waiver” if they do not undermine the determination that California’s standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards, do not create any inconsistency with section 202(a) of the CAA, and do not raise any new issues affecting EPA’s previous waiver decision. “California State Motor Vehicle Pollution Control Standards; Within the Scope Determination and Waiver of Preemption Decision for Amendments to California’s Zero-Emission Vehicle (ZEV) Standards,” 76 Fed. Reg. 61095 (Oct. 3, 2011). Here, however, because CARB’s “antecedent” standards are: (i) nearly 6-times less stringent than the corollary federal standards for MY 2027 and beyond; (ii) inconsistent with the leadtime requirements of CAA section 202(a) of the CAA; and (iii) foreclosed in any event by the CRA legislation enacted in 2025, they are completely disqualified from receiving any preemption waiver.

Conclusion

The federal CRA legislation preempted and precluded CARB from adopting or attempting to enforce any prior or future version of the Omnibus regulations. Similarly, as EPA has stated directly to CARB, any attempts to adopt or implement “antecedent” MHD emission standards where such standards previously lapsed and need to be amended require a new preemption waiver that CARB has not requested or received. Moreover, CARB’s antecedent standards are disqualified from receiving any waiver since they provide no leadtime, and since they are 6-times higher than the federal MHD emission standards that otherwise would take effect in Washington in the absence of this unlawful rulemaking.

The net result is that CARB’s “antecedent” MHD standards remain preempted, unlawful, adverse to public health, and unenforceable. The corollary to that, as clearly spelled out under CAA section 177, is that the DOE’s rulemaking proposal to opt-in to those same antecedent standards is preempted and unlawful as well.

Respectfully Submitted,

TRUCK AND ENGINE
MANUFACTURERS ASSOCIATION