STATE OF CALIFORNIA
AIR RESOURCES BOARD

Proposed Amendments to the On-Road	**)**	**Comment Deadline:**
Heavy-Duty Engine and Vehicle	**)**	**November 10, 2025**
Omnibus Regulations, and Proposed	**)**	
Permanent Adoption of the Emergency	**)**	**Hearing Date:**
Vehicle Emissions Regulations	**)**	**November 20, 2025**

COMMENTS OF THE TRUCK AND ENGINE MANUFACTURERS ASSOCIATION

November 10, 2025

Timothy A. French
Truck & Engine Manufacturers Association
333 West Wacker Drive, Suite 810
Chicago, IL 60606

STATE OF CALIFORNIA
AIR RESOURCES BOARD

Proposed Amendments to the On-Road	**)**	**Comment Deadline:**
Heavy-Duty Engine and Vehicle	**)**	**November 10, 2025**
Omnibus Regulations, and Proposed	**)**	
Permanent Adoption of the Emergency	**)**	**Hearing Date:**
Vehicle Emissions Regulations	**)**	**November 20, 2025**

Introduction

The Truck and Engine Manufacturers Association (EMA) hereby comments on the California Air Resources Board's (CARB) "Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus Regulations, and Proposed Permanent Adoption of the Emergency Vehicle Emissions Regulations" (Proposal). CARB seeks to amend its Omnibus regulations to "largely align" California's heavy-duty on-highway (HDOH) emission standards and test procedures with corollary federal rules for 2027 and subsequent model years (MY). CARB also seeks to permanently adopt its recent "emergency" regulations under which CARB (i) continued to implement its Omnibus regulations, presumably as to be amended, and (ii) attempted to readopt and amend "certain antecedent" HDOH emission standards that the Omnibus regulations supplanted and terminated.

EMA is the trade association that represents the world's leading manufacturers of the HDOH engines covered by the Proposal. As explained in EMA's comments on CARB's "emergency" rulemaking, and as detailed below, CARB's current Proposal is expressly preempted and otherwise unlawful under federal and California law.

Congressional Review Act Legislation Preempted and Curtailed CARB's Regulatory Authority Over HDOH Engines and Vehicles

The Proposal appears to be designed to avoid the consequences of the Congressional Review Act (CRA) legislation that the President signed into law on June 12, 2025. Congress and the President expressly disapproved and voided the prior federal preemption waiver that EPA had issued for Omnibus and certain other mobile source regulations. Pursuant to the CRA legislation, EPA is now prohibited from granting any future preemption waivers for any CARB regulations that are "substantially the same" as the now-voided Omnibus and other regulations. See H.J. Res. 89, Pub. L. No. 119-17.

Despite the CRA legislation constraining CARB's authority to adopt and enforce HDOH emission regulations, CARB is proposing (i) to adopt amendments to the Omnibus regulations that have been voided by federal law and to continue implementing those amended rules by accepting and processing certification applications under the Omnibus rules; (ii) to implement a new and amended blend of HDOH standards and requirements that purportedly were "antecedent" to Omnibus, while ignoring the fact that those new rules will require (but may not receive) a new preemption waiver from EPA; and (iii) to retroactively enforce the currently void Omnibus

regulations against manufacturers who comply with the "antecedent" standards, in the event CARB succeeds in its litigation effort to overturn the CRA legislation.

CARB's Proposal is fundamentally flawed and unlawful. The CRA legislation curtails CARB's regulatory authority such that both the Omnibus amendments and the new and amended "antecedent" standards are preempted. See Presidential Signing Statement for Joint Resolutions, June 12, 2025; see also 42 U.S.C. §§ 7543(a)-(b). As noted, the first component of CARB's pending rulemaking is to amend the Omnibus regulations to "largely align" with EPA's low-NOx regulation. But that proposal no longer makes sense. There are no viable Omnibus regulations to amend. To the contrary, the CRA legislation voided those regulations, with the result that those regulations are of no force or effect whatsoever. It is as though they never existed. Accordingly, CARB is proposing to amend what amounts to a nullity, something that it has no authority to do. Moreover, even if CARB could amend a nullity, EPA is precluded from granting a preemption waiver for any CARB regulation that is substantially the same as the Omnibus regulations, which the amended Omnibus regulations obviously would be.

Nonetheless, CARB's Proposal seeks to implement certain "antecedent" HDOH standards and requirements to be implemented and enforced in parallel with the Omnibus standards, purportedly until the litigation CARB initiated challenging the CRA legislation is fully resolved. In the interim, CARB states 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." (ISOR, Appendix G, p.11.) But, under the Clean Air Act (CAA), CARB cannot implement or enforce a new mix of previously-lapsed and amended "antecedent" HDOH emissions standards without first obtaining a new preemption waiver or a "within the scope" determination from EPA. And CARB is unlikely to obtain such a waiver any time soon.

Significantly, in a comment letter dated September 27, 2025 sent to CARB's Executive Officer, the EPA Assistant Administrator stated:

> 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 it clear that CARB's Proposal is preempted and unlawful. The "antecedent" standards cannot be resurrected because they lapsed years ago and would now be applied in different ways to different model years, which will require a new preemption waiver that CARB knows it likely cannot obtain. As a result, the Proposal cannot be lawfully adopted or enforced.

In addition, CARB's Proposal is internally inconsistent. On the one hand, CARB is proposing to amend the Omnibus regulations to largely align with EPA's corollary standards, while on the other hand proposing to acknowledge, at least provisionally, the impact of the CRA legislation. CARB is simultaneously proposing to continue to implement the Omnibus regulations (as amended), while attempting to resurrect and revise certain previously-lapsed antecedent HDOH standards and requirements that were in effect and codified in the California Code of Regulations (CCR) prior to the initial adoption of the Omnibus regulations in 2020. It makes no sense to amend the Omnibus regulations and also attempt to revive an alternative scheme simultaneously in the same rulemaking.

CARB's Proposal also is in conflict with the CAA. Specifically, the Proposal conflicts with the CAA because: (i) CARB needs to obtain a new preemption waiver from U.S. EPA ***before*** adopting or attempting to enforce any new emission standards for new HDOH trucks and engines, and (ii) CARB also needs to provide at least four years of lead time ***before*** attempting to enforce those revised emission standards. The Proposal fails to satisfy both of those federal mandates.

CARB also is claiming enforcement authority it does not have. CARB proposes to reserve the right to retroactively enforce the Omnibus regulations, notwithstanding that a key component of the Proposal is to create an alternative compliance pathway that includes a new blended version of certain antecedent NOx and PM standards, until such time as "a court of law holds invalid the [CRA] resolution purporting to disapprove the [Omnibus] waiver." Emergency Regulations Notice, p. 6. There is no lawful basis for CARB to threaten retroactive enforcement of regulations that it acknowledges have been preempted. CARB has no authority to punish manufacturers at some point in the future for not complying with regulations that are currently preempted and that CARB

took emergency and regular rulemaking measures in an attempt to create an alternative compliance pathway.

Indeed, CARB's threat of retroactive enforcement is just that, a coercive threat to try to strong-arm manufacturers into complying with Omnibus regulations that CARB knows it has no power to enforce. And the availability of retroactive enforcement and penalties in the event that the Omnibus resolution is held invalid is for a court to decide. *See, e.g.*, Order on Motion for Preliminary Injunction at 28, *Daimler Truck N. Am. v. CARB*, No. 2:25-cv-02255-DC (Oct. 31, 2025) (ECF 94). Trying to hold manufacturers hostage during the pendency of that litigation is not only unlawful, it is also the type of targeted ex post facto coercion that the State of California should denounce.

CARB's Proposal is Inconsistent and in Direct Conflict With the Clean Air Act

A. CARB's Proposal is Unenforceable Without a Waiver

CARB is attempting to circumvent the CRA legislation by promulgating a new, amended set of previously-lapsed emission standards combining parts of earlier HDOH regulations for which CARB had received now-superseded preemption waivers. But the result of CARB's Proposal would be the immediate implementation and enforcement of a new proposed set of standards that has no operative preemption waiver, which violates section 209(a) of the CAA. 42 U.S.C. §7543(a) ("[N]o State … shall 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 rulemaking is preempted because it attempts to adopt and enforce newly revised HDOH standards without first having a new EPA preemption waiver in place or obtaining a determination from EPA that the new set of emission standards is "within the scope" of a previously granted waiver.

In light of this conflict, CARB attempts to rely on prior waivers from EPA as justification for adopting and immediately enforcing the new amended mix of lapsed emission standards. But 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 those standards as "earlier-adopted standards, which have extant preemption waivers not subject to the recent congressional resolutions" (CARB 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 the prior "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 this rulemaking, CARB admits that it is "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 new amended standards in new sections of the CCR, which requires a new preemption waiver. EPA has said just that in its September 27th comment letter to CARB, cited above.

Describing new regulatory sections and amended language as "earlier-adopted standards" does not reflect the reality that regulated parties are facing. Until now, the proposed new set of

revised antecedent standards was not contained in the CCR, and regulated parties had no way to ascertain that those HDOH emissions standards would apply to 2026 MY products or to future model years. From that perspective as well, implementation of these 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 replacement standards do not simply reverse the regulatory changes and CCR additions effectuated through CARB's now-nullified Omnibus rulemaking. See CARB, Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments (OAL Approval Dec. 21, 2022).[1] For example, the 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 2006[L]
(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]	n/a	n/a	n/a	0.10, 0.05, 0.02, or 0.01	0.14	15.5	0.01

CARB, Title 13 Final Regulation Order (Date of Hearing: Aug. 27, 2020), at 5.[2]

Here, the Proposal does not simply "undo" those Omnibus-implemented strike-outs to restore the prior version of CCR, title 13, section 1956.8. Rather, CARB is adopting new and separate regulatory sections with a new mix of HDOH emissions standards applicable to current and subsequent model year HDOH engines. Moreover, the new sections and amended regulatory language presented in Appendix A-1-2 to the Proposed Regulation are not a replica of a prior rule that was subject to a prior EPA waiver. Instead, the Proposal seeks to codify a new mix of emissions standards and requirements made up from various regulatory provisions covered by separate 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 to 2026 MY HDOH vehicles and engines. No such blended HDOH vehicle standards has ever

[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.

existed before. Consequently, CARB is proposing to enforce a new, 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 says (which it is not), "restoring" prior emissions standards to apply them to the current and subsequent model year still violates federal law, because that similarly creates new HDOH regulations without a waiver. Any argument that this is not a "new" adoption and enforcement of amended HDOH standards because the antecedent 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 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 ceased to apply and lapsed after the 2023 MY. CARB specifically "sunset" those prior standards. Thus, any attempt to amend (not simply "revive") those expired antecedent standards so that they apply to current and future model years necessarily ***amends*** the current emission standards applicable for this model year and subsequent model years, which requires a new preemption waiver.

In sum, CARB's attempted implementation of its blend of amended "antecedent" HDOH emission standards requires a new preemption waiver or "within the scope" determination from EPA. In the absence of such a waiver, the replacement standards, slated to be implemented immediately, violate federal law and cannot be enacted or enforced.

B. CARB Is Preempted From Adopting the Proposal

Importantly, the express preemption at issue not only precludes any attempt by CARB to ***enforce*** regulations before receiving a preemption waiver from EPA, it also preempts CARB's ***adopting*** regulations in the absence of a preemption waiver. While heretofore CARB's practice of adopting HDOH regulations before seeking a preemption waiver did not draw legal challenges – in part because CARB's HDOH 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. Requiring compliance with that element of the CAA's preemption provisions is not just an exercise in statutory formality. Rather, it is a necessity 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 HDOH 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 HDOH 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 HDOH 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 HDOH regulation has gone into effect for a given model year of production. Under that past practice, then, there is really no leadtime at all between an EPA waiver determination and the full enforcement of the CARB HDOH regulation at issue.

For manufacturers, the practical impact of this process has been that manufacturers are forced to assume that any Board-approved HDOH regulation is valid and covered by a preemption waiver that EPA might issue years in the future. If manufacturers assume otherwise, they run the real risk of having no time to comply if and when EPA issues a preemption waiver years later. Thus, CARB's practice of not seeking a preemption waiver for its HDOH regulations before formally adopting them has nullified the whole preemption waiver process. Manufacturers cannot wait for the preemption waiver process to play out because, according to CARB, their leadtime starts to run before the waiver process even begins, and because that process likely will not be completed until the dates of compliance with the CARB regulations at issue have arrived.

Under this practice, therefore, by the time any preemption waiver decision is issued for a previously adopted CARB HDOH regulation, that regulation has already been implemented and manufacturers are already under an obligation to comply with it. As a consequence, manufacturers are compelled to prepare to comply with CARB's HDOH regulations starting from the date of their adoption given the later-initiated waiver process will not conclude in time to provide manufacturers with the certainty they would need to forestall their compliance efforts. All of this renders the waiver process a nullity in violation of CAA section 209(a).

Significantly, the United States and EPA have realized how abusive CARB's preemption waiver practice has become and are turning to the courts to compel the required step of seeking a waiver *before adopting* the regulation at issue. For example, in a brief filed recently 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 HDOH regulations, 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).

Section 209(b)'s preemption waiver provision supports the plain text of section 209(a). Section 209(b) provides that EPA shall waive section 209(a) preemption for California but only "if the State . . . standards will be, in the aggregate, at least as protective as [EPA's standards]." 42 U.S.C. § 7543(b). Reference to state standards that "*will be* . . . at least as protective" indicates that the standards are not yet adopted. *Id.* (emphasis added). The future tense in section 209(b) is consistent with section 209(a)'s clear prohibition on adopting standards without a waiver.

Beyond the plain text prohibiting California from adopting [HDOH regulations] before obtaining a waiver, "the structure of the statute as a whole, including its object and policy," show that the [HDOH 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 appliable 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).

As to policy, Congress recognized that automotive [and truck] markets require sufficient lead time to adjust to changes in heavy-duty emissions standards for purposes of stability. *See, e.g.*, 42 U.S.C. § 7521(a)(1)(C) (requiring four-year lead time). The fundamental restructuring of our heavy-duty trucking industry to achieve the electric-vehicle mandate that [CARB's HDOH regulations] seek would require considerable lead time. *See* Manufacturer Plaintiffs' Opposition to Defendants' Motion to Dismiss Daimler Truck North America et al.'s Complaint. (Mfrs.' Opp.) at 23-24 (explaining that the manufacturers must take steps now to achieve the electric-vehicle mandate within a decade). Congress's express prohibition on adopt first, waiver later in section 209(a) is consistent with this policy of promoting market stability in the automotive [and HDOH truck] industry.

Decisions that have upheld the adopt first, waiver later procedure cannot be squared with the text and structure of section 209. *Central Valley Chrysler-Jeep v. Goldstene* mistakenly concluded that section 209(b)'s reference to "any state which has adopted standards" allowed adoption before waiver. 563 F. Supp. 2d

1158, 1163 (E.D. Cal. 2008). But the reference to "any State which has adopted standards" identifies which states can seek a waiver—namely California, which is the only state that "had adopted standards" as of March 30, 1966. 42 U.S.C. § 7543(b). It does not speak to the standards that such a state may adopt after section 209(a)'s enactment.

The Second Circuit's decision in *Motor Vehicle Manufactures Association of U.S., Inc. v. New York State Department of Environmental Conservation* 17 F.3d 521, 534 (2d Cir. 1994), is equally flawed. That court upheld New York's adoption of California's emissions standards before California obtained a preemption waiver on the theory that "waiver is a precondition to enforcement" rather than adoption and that "California's waiver applications are almost always approved." *Id.* Finding that the waiver is a limitation only on enforcement is contrary to the clear text and structure of section 209. And it simply is not true that California "almost always" gets waivers for its new motor vehicle emissions standards. Indeed, EPA denied the very first greenhouse gas-related waiver California requested, and EPA later rescinded such a waiver granted by an intervening administration. *See Diamond Alternative Energy*, 145 S. Ct. at 2130-31. Congress itself recently disapproved California's preemption waivers for Clean Trucks and Omnibus. *See* Pub. L. No. 119-15, 139 Stat. 65 (Clean Trucks); Pub. L. No. 119-17, 139 Stat. 67 (Omnibus).

In the past, EPA has 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).

C. <u>The Regulation Cannot Satisfy the CAA Section 209(b) Waiver Criteria</u>

The Proposal also fails because the proposed standards 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 lead time before enforcing any new set of HDOH emission standards. <u>See</u> 42 U.S.C. §§ 7543(b)(1)(C), 7521(a)(3)(C). In this case, however, CARB is providing ***no lead time whatsoever***. CARB is maintaining that the amended antecedent standards became effective on September 22nd, "upon filing with OAL." In addition to manufacturers' product design and development timelines for new HDOH trucks and engines (the core issue warranting the CAA-mandated lead time), emissions and on-board diagnostic (OBD) testing for any given model year of trucks and engines takes months—if not more than a year. And, with respect to MY 2026, manufacturers have already taken new truck orders and mapped out their production schedules, which have in fact already

begun. Thus, there is no real possibility for manufacturers to comply immediately with a revised package of standards that supposedly took effect two months ago. CARB's violation of the CAA's lead time requirement conflicts with federal law.

CARB also has not shown that its amended antecedent standards are technologically feasible, which also is inconsistent with CAA sections 202 and 209. *See* 42 U.S.C. §§ 7543(b)(1)(C), 7521(a). For example, CARB's new mix of amended regulatory provisions excludes several changes to OBD standards that were included in the Omnibus rulemaking package to ensure technical feasibility, such as modifications to certain test-out criteria and changes to thresholds at which failures must be reported and addressed. *See* CARB, Initial Statement of Reasons, Proposed Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments (June 23, 2020) at III-10.

EPA will only consider CARB's amendments to previously approved 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, CARB's new provisions are less stringent than the corollary federal standards as of MY 2027, are inconsistent with the lead time requirements of CAA section 202(a) of the CAA, and are foreclosed in any event by the CRA legislation.

The U.S. District Court Has Enjoined Any Implementation or Enforcement of the Clean Trucks Partnership (CTP) Agreement

On October 31, 2025, the United States District Court for the Eastern District of California entered an order preliminarily enjoining CARB from taking any steps to implement the CTP. *Daimler Truck N. Am., et al. v. CARB*, Case No. 2:25-CV-02255-DC-AC (E.D. Cal. Oct. 31, 2025), slip. op. at 34. The court found that "there are serious questions going to the merits of [Plaintiffs'] claim that the [CTP] is preempted," and that through CARB's attempts to enforce the CTP, CARB is attempting enforcement of "at least some standards for which it admitted never obtained preemption waivers." *Id.* at 32. The CTP was one of the bases CARB included in Initial Statement of Reasons (ISOR) in support of the Proposal, and the CTP is now enjoined. (See ISOR, pp. II, 5, 10, 23, 26, 48, 50.) That said, EMA supports CARB's objective of harmonization. However, during this period of uncertainty as to whether CARB has valid certification authority at all, allowing manufacturers to follow federal emissions standards is the best approach to harmonize standards.

CARB Has No Authority for its Threats of Retroactive Enforcement

CARB also is threatening retroactive enforcement of the Omnibus standards notwithstanding their nullification under the CRA legislation. By doing so, CARB is attempting to compel compliance with standards that are no longer in effect as a matter of law. Such threatened retroactive enforcement is heavily coercive. In the face of CARB's threats, manufacturers face the dilemma of complying with the regulations that Congress voided, thereby acting in contravention

of federal law, or not complying with the Omnibus regulations, which creates the specter of heavy fines and other enforcement actions during any interim period that might lead up to a successful litigation outcome for CARB in the future. Administrative law has a strong presumption against any form of retroactivity, and retroactive penalties would be especially unreasonable and unlawful in this case. CARB has no authority to retroactively enforce its now-void Omnibus emission standards.

Simply stated, CARB's threat of retroactive enforcement amounts to an unauthorized attempt to enforce the Omnibus regulations that Congress invalidated under the CRA. Through its threats to retroactively enforce the Omnibus regulations, if CARB succeeds in its lawsuit against the United States, CARB is deliberately creating an untenable "Catch-22" for truck and engine manufacturers. They can continue to comply with regulations that Congress voided, or they can follow federal law while facing large financial penalties if CARB proves to be a prevailing litigant. CARB has no authority to set such a snare through an unlawful threat of retroactive ex post facto enforcement tactics. The CRA-related litigation that CARB has commenced against the United States could take years to reach a final solution, which creates years of uncertainty for manufacturers and their customers. All the while, manufacturers could be incurring fines of $48,788 per new non-Omnibus-compliant engine and vehicle sold or operating in California. (See CARB Memo re Maximum Penalties, February 21, 2025.) The Board should reject that type of coercive and unauthorized behavior and should direct CARB staff to delete any references to retroactive enforcement in any communications with HDOH manufacturers.

CARB Has Not Met its CEQA Obligations

As with its "Emergency" Regulation, CARB seeks to avoid the environmental review required under the California Environmental Quality Act (CEQA) by invoking exemptions under Cal. Code Regs. tit. 14, §§ 15061(b)(3) (common sense), 15307 (natural resources protection), and 15308 (environmental protection). Proposed Rule ISOR at 43-47. An agency may not rely on these exemptions where record evidence demonstrates any possibility of significant environmental effects or where a rule relaxes existing environmental safeguards or otherwise risks environmental degradation. CARB argues its actions merely maintain the status quo, protect health amid uncertainties created by the CRA legislation, and present no possibility of significant environmental effects. Yet CARB's own statements in support of the Proposal confirm a possibility of adverse effects relative to the preempted Omnibus regulation and comparable federal standards. Ultimately, this possibility forecloses reliance on the claimed exemptions.

Specifically, the "common sense" exemption only applies if CARB demonstrates with substantial evidence that "it can be seen with certainty there is no possibility that the activity in question may have a significant effect on the environment." 14 Cal. Code Regs. § 15061(b)(3); *see also Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n*, 41 Cal. 4th 372, 386-87 (2007), quoting *Davidon Homes v. City of San Jose*, 54 Cal. App. 4th 106, 114 (1997) ("'[T]he agency's exemption determination must [rely on] evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision.'").

Further, the protective-purpose of categorical exemptions (14 Cal. Code Regs. sections 15307, 15308) do not apply where the action may relax existing standards or otherwise risk environmental degradation. 14 Cal. Code Regs § 15308 ("relaxation of standards allowing

environmental degradation are not included in this exemption"); *see also Dunn-Edwards Corp. v. BAAQMD*, 9 Cal. App. 4th 644, 653-58 (1992) (no exemption where possibility of increased emissions); *Int'l Longshoremen's & Warehousemen's Union v. Board of Supervisors*, 116 Cal. App. 3d 265, 276 (1981) (no exemption where NOx emissions standards are relaxed); *California Unions for Reliable Energy v. Mojave Desert AQMD*, 178 Cal. App. 4th 1225, 1240-47 (2009) (exemption invalid absent evidence of no significant adverse effects).

Here, the Proposal would amend and put in place "relaxed" antecedent HDOH emission standards in lieu of more stringent federal standards, especially those starting in MY 2027. CARB's own pending Notice of Rulemaking, issued on September 23, specifically acknowledges that the current and continuing HDOH federal diesel standards are comparable to the now-void Omnibus standards starting in MY 2027. That statement makes it clear that adopting and implementing the relaxed antecedent standards could lead to higher emissions, especially from and after the 2027 MY. Under the applicable CEQA Guidelines, any attempt to make emission standards less stringent bars the application of CARB's claimed CEQA exemptions.

CARB attempts to argue that the CRA legislation has necessitated the Proposal. That perceived necessity—which does not in fact exist where protective federal standards are in place—does not excuse CARB from complying with CEQA's requirements. CARB's relaxation of emissions standards creates reasonably foreseeable environmental impacts, which, under California law, precludes application of CARB's claimed CEQA exemptions. CARB has not met the demanding certainty showing required by the common sense exemption, nor can CARB rely on the exemptions for natural resources and environmental protection where the Proposal lessens such protections. Therefore, CARB should prepare an appropriate CEQA analysis to determine whether and how the Proposal might cause adverse environmental effects.

Conclusion

The federal CRA legislation has 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 attempt to adopt or implement "antecedent" HDOH emission standards where such standards have previously lapsed and will need to be amended will require a new preemption waiver that CARB has not received. Moreover, the U.S. District Court has now ruled that the entire basis for the Proposal – the CTP – is preempted and cannot be implemented or enforced in any manner pending further order from the court.

The net result is that CARB's Proposal is preempted, unlawful, and unenforceable. Accordingly, the preempted Proposal should be rejected and withdrawn. Instead, the Board should direct staff to work with the HDOH industry to coordinate the implementation in California of the corollary federal HDOH standards that remain in effect.

Respectfully Submitted,

TRUCK AND ENGINE
MANUFACTURERS ASSOCIATION