

# DAIMLER TRUCK

## North America

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### **Re: Emergency Amendment and Adoption of Vehicle Emissions Regulation**

Daimler Truck North America (DTNA) appreciates the opportunity to comment on the California Air Resources Board (CARB) Second 15-Day Notice and Proposal to Readopt the Emergency Vehicle Emissions Regulation (Emergency Regulation). DTNA is the largest producer of Class 8 vehicles in North America. DTNA is committed to providing our customers with a diverse lineup of technologies to suit their needs and applications, including zero-emission solutions.

These comments supplement and incorporate by reference DTNA's prior comments on CARB's efforts to implement the Emergency Regulation, including comments filed on September 26, 2025, November 10, 2025, March 26, 2026, and June 23, 2026.

In June of 2025, pursuant to the Congressional Review Act, the federal government statutorily preempted California's emissions standards governing heavy-duty vehicles and engines. California has continued to (1) demand compliance with its heavy-duty emissions standards and (2) require manufacturers to obtain certification to those standards as a condition precedent to retail sale, despite that Section 209(a) of the Clean Air Act provides that, absent a waiver, "No State ... shall adopt or attempt to enforce any standard relating to the control of emissions" from new vehicles or engines, and further mandates, "No State shall require certification ... as condition precedent to the initial retail sale" of those vehicles or engines. 42 U.S.C. § 7543(a).

With this latest round of proposed changes to the Emergency Regulation, CARB continues to attempt to promulgate new heavy-duty emissions standards stitched together from old and inapplicable standards. The end result is new preempted emissions standards in violation of Section 209(a) of the Clean Air Act. CARB also continues to threaten retroactive enforcement of Omnibus and ACT, which is an impermissible attempt to enforce the standards.

#### **1) CARB lacks the authority to adopt or enforce its Phase 2 Greenhouse Gas Standards.**

Most overtly, in this latest round of proposed changes, CARB concedes that it never applied for or received a federal preemption waiver for its Phase 2 Greenhouse Gas (GHG) emissions standards. CARB proposes to add language in several sections of the California Code of Regulations stating that CARB "will not seek to enforce the Phase 2 [GHG] emission standards until such time as it receives a waiver from the U.S. EPA." See, e.g., § 1956.8, Appendix A-3.1, Proposed Second 15-Day Changes to Proposed Title 13 Regulation Order ("Second 15-Day Notice") (June 30, 2026).

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DTNA agrees that CARB cannot attempt to enforce its Phase 2 GHG standards, as CARB does not have an accompanying federal preemption waiver. But CARB's Phase 2 GHG standards are also preempted under Section 209(a)'s prohibition on "adopt[ing]" any emissions standard without an EPA waiver. This distinction is particularly significant given that CARB's stated practice is to enforce its standards retroactively to adoption, as CARB has not disclaimed retroactive enforcement of the Phase 2 GHG standards in the new proposed language.

In fact, CARB has required manufacturers to certify to the Phase 2 GHG standards as a condition of sale since model year 2021, even without a waiver. Manufacturers Advisory Correspondence 2020-02 (Oct. 16, 2020) ("certification and associated reporting requirements of the [Phase 2] regulation ... became effective on April 1, 2019"); *see also* Cal. Code Regs. tit. 17, § 95663 (applying Phase 2 GHG standards to manufacturers since model year 2021). This is CARB's retroactive enforcement theory in action: CARB has treated Phase 2 GHG as operative since model year 2021.

Further, CARB's latest round of proposed changes is a clear attempt to preserve its truck certification authority, as CARB's only authority to require certification of heavy-duty trucks comes through its GHG standards. But CARB cannot solve that problem by attempting to resurrect its Phase 1 GHG standards. CARB itself limited Phase 1's applicability to pre-model year 2021 trucks when it adopted Phase 2. *See, e.g.,* CARB, Final Regulation Order for Phase 2 Greenhouse Gas Regulations and Tractor-Trailer GHG Regulations (posted Feb. 7, 2019), at A-2. And any effort to resurrect Phase 1 now through the Emergency Regulation would simply add to the waiverless patchwork of superseded standards that has never been reviewed or approved as a coherent program. Whether CARB relies on its Phase 2 or tries to resurrect its Phase 1 to preserve its truck certification program, it is still conditioning truck sales on compliance with waiverless standards, which is precisely what Section 209(a) forbids. *See Conditions Precedent to the Sale, Titling, or Registration of New Motor Vehicles in California*, 50 Fed. Reg. 35,123 (Aug. 9, 1985).

### **2) CARB lacks the authority to adopt or enforce the Emergency Regulation.**

The proposed changes further demonstrate that the Emergency Regulation is a patchwork assortment of rules that have never been promulgated as a coherent regulatory program, and certainly have never received a waiver in aggregate. CARB purports to "restor[e]" the 2012 version of certain regulations as a replacement for 2015 rules originally "recodified" in the Emergency Regulation, based on CARB's subsequent realization that the 2015 rules never received an EPA waiver at all. Aside from demonstrating that *even CARB* cannot reliably determine which iteration of its regulations received a waiver, this also shows that the Emergency Rulemaking stitches together rules from different eras—as relevant to DTNA, 2012 versions of evaporative and refueling emissions standards. Those provisions are added to an already fragmented regulatory scheme, including 2007 and subsequent model-year heavy-duty

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diesel engine NOx emissions standards; 2017 and subsequent model-year heavy-duty diesel engine CO2 emissions standards; and 2016 and subsequent model-year heavy-duty engine on-board diagnostic standards. The Emergency Regulation does not merely restore the pre-Omnibus regulatory regime. CARB is adopting entirely new regulatory sections with standards applicable to current and subsequent model years and inserting new language into provisions.

### **3) CARB's attempt to codify its threat of retroactive enforcement violates federal law.**

In these latest proposed changes, CARB continues to threaten retroactive enforcement of Omnibus, which is an impermissible attempt to enforce the standards. See Second 15-Day Notice at 4. Under the new rules, manufacturers can avoid potential penalties only if they follow the Omnibus regulation as opposed to the new proposed "Emergency Regulation" or "deem to comply," the two alternatives for certification offered by CARB in the August MAC. Putting aside that CARB has no authority to certify heavy-duty trucks at this time, the "choice" presented by CARB is not a real choice. The potential for significant penalties coerces manufacturers to conform their conduct to CARB's preempted rules before those rules can be tested in court, particularly where CARB insists on litigating to "final judgment," which creates years of uncertainty for industry. All the while, the penalties would accrue, creating significant business risk for companies that ask a court to clarify the law when two regulators disagree or presume that federal legislation is valid. As such, CARB's regulatory language stating that it will enforce Omnibus (without regard to court orders or enforcement discretion) violates Section 209's attempt to enforce clause (among other issues). And as described above, CARB has also not disclaimed retroactive enforcement of the Phase 2 GHG standards in the new proposed language despite not having a federal preemption waiver.

CARB should clarify that there will be no retroactive enforcement against any manufacturer that has utilized the alternative compliance pathways that CARB expressly provided in this rulemaking.

**In conclusion, DTNA believes CARB should work closely with industry and EPA to determine workable solutions that observe the principles of the Clean Air Act including the requirements for lead time and stability, the need for waivers, and the implementation of the Congressional Review Act.**