

**STATE OF CALIFORNIA
AIR RESOURCES BOARD**

Proposed Modified Text (15-Day)	Executive Officer Hearing Date:
Changes) for the Proposed Amendments)	October 20, 2023
to the Heavy-Duty Engine and Vehicle)	Public Comment Deadline:
Omnibus Regulations)	December 21, 2023

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

December 20, 2023

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

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The Truck and Engine Manufacturers Association (EMA) appreciates the opportunity to submit these comments on the 15-day changes that the California Air Resources Board (CARB) has proposed to make to the previously-noticed amendments to CARB’s Heavy-Duty Omnibus regulations. The pending amendments are one of the key elements of the Clean Trucks Partnership that EMA and CARB have entered into, and EMA further appreciates CARB’s willingness to work collaboratively to ensure that the Omnibus amendments, when completed, fully reflect the terms and intent of that ground-breaking Partnership. The discussions that continue between EMA and CARB toward that end are further evidence that the Partnership is proving to be both robust and productive, which, in the end will help to ensure our mutual objective of cleaner air on as rapid a timeline as reasonably achievable.

Notwithstanding our overall support for CARB’s proposals, EMA does have a remaining concern about one aspect of the proposed 15-day changes. More specifically, while EMA supports the proposed revision to base “California sales volumes” on “California-certified engines, vehicles or powertrains produced and delivered for sale in the State of California” (as opposed to engines, vehicles or powertrains “sold to an ultimate purchaser” in the State of California), the Notice for the 15-day changes raises concerns about the ultimate efficacy of the revisions. In describing the definitional changes, the Notice states that:

“After the end of the model year, manufacturers would submit the required end-of-year production reports to CARB to identify the specific engines and vehicles that were sold in California. CARB staff would then use all available tools such as the California Department of Motor Vehicles registration data, warranty registration data, sales records and any other available data to verify the accuracy of the California sales volume for each manufacturer.”

The foregoing language in the Notice potentially creates the same type of practical problem that EMA and CARB have been working hard to resolve. That problem stems from the fact that manufacturers do not have ultimate control of where still-new non-mitigated, non-capped California-certified legacy-engine-powered vehicles (Non-Mitigated Legacy Vehicles) may be operated or registered after their initial sale. In other words, manufacturers do not have ultimate control over whether some number of still-new Non-Mitigated Legacy Vehicles may end up in California. Only the owners/operators of those vehicles have that ultimate control. Accordingly, what EMA members have proposed to do to mitigate the potential “leakage” of Non-Mitigated Legacy Vehicles into California is to ensure that Non-Mitigated Legacy Vehicles do not have a

“CA” designation on their engine labels, and that the Manufacturer’s Certificate of Origin (MCO) for those vehicles confirms that they are not intended for registration or primary use in California.

As a practical matter, that is all manufacturers can do. After that, if an owner/operator chooses to flout manufacturers’ restrictions by basing a Non-Mitigated Legacy Vehicle in California, that breach needs to be the responsibility of the owner/operator, not the manufacturer. Indeed, California’s Vehicle Code confirms as much. Sections 4000 through 4000.6 of the Vehicle Code require the owners of heavy-duty vehicles operating in California to obtain California registrations and, among other things, to be in compliance with the standards established by CARB under the Health and Safety Code. Those owners that fail to do so are subject to monetary penalties. Thus, there is an established mechanism for addressing CARB’s concern without shifting potential owner/operator liabilities onto manufacturers.

As EMA and CARB have discussed, it is important to resolve this issue in a clear manner. Otherwise, the uncertainties regarding the imposition of potential liabilities for Non-Mitigated Legacy Vehicles well after the close of a model year could have negative impacts on the broader market for new heavy-duty motor vehicles. That adverse consequence is something we are working hard to address even now.

Accordingly, in light of the foregoing, and consistent with our other ongoing discussions to implement the Clean Trucks Partnership, EMA requests that CARB exclude from the Final Statement of Reasons for the Omnibus amendments the language quoted above from the notice for the 15-day changes, and instead include a statement confirming that CARB intends to verify manufacturers’ year-end California sales volumes consistent with the engine-labeling and MCO approach that will be delineated in the Manufacturers Advisory Circular (MAC) that CARB will be issuing pursuant to the Clean Trucks Partnership. In that respect, the Partnership Agreement states that CARB will issue “a MAC prescribing how to determine legacy engine cap compliance (for example, via engine labeling data).” The Agreement further confirms that “CARB staff’s intent is to be flexible regarding de minimus accidental leakage of non-legacy engines into California.”

As noted at the outset, EMA very much appreciates CARB’s continuing engagement on these and other issues related to the full implementation of the Clean Trucks Partnership. We look forward to our ongoing collaboration to that end.

Respectfully Submitted,

TRUCK AND ENGINE
MANUFACTURERS ASSOCIATION