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BACKGROUND DOCUMENT

ON EMERGENCY REGULATION AMENDMENTS TO

310 CMR 7.40

Low Emission Vehicle Program

REGULATORY AUTHORITY:
M.G.L. c. 111 §§ 142A–142M; M.G.L. c. 21N

November 4, 2024

I. SUMMARY

On November 4, 2024, the Massachusetts Department of Environmental Protection (MassDEP) filed emergency regulations with the Massachusetts Secretary of the Commonwealth that amended 310 CMR 7.40, *Low Emission Vehicle Program*. These amendments were effective upon filing and an unofficial copy of the regulations that were filed is on MassDEP's website at <https://www.mass.gov/info-details/massdep-public-hearings-comment-opportunities>. To make the regulations permanent, MassDEP is holding public hearings and a comment period on the amendments to comply with the public review process requirements under Massachusetts General Laws (M.G.L.) Chapter 30A, Section 2. The public hearings are scheduled on December 9, 2024, and the deadline to submit public comments is December 19, 2024.

To ensure consistency with California vehicle regulations, MassDEP amended 310 CMR 7.40 *Low Emission Vehicle Program* to adopt California's amendments to its Heavy-duty Omnibus legacy engine provisions for model year (MY) 2026 and to exempt transit buses, emergency vehicles, and military tactical vehicles from vehicle emissions standards. In addition, to provide certainty to all stakeholders and because the U.S. Environmental Protection Agency (EPA) has not yet issued a waiver for Heavy-duty Omnibus, MassDEP amended the Heavy-duty Omnibus start year in 310 CMR 7.40(1)(d)4. from model year 2025 to 2026.

II. BACKGROUND

To comply with the Massachusetts Clean Air Act,¹ on December 30, 2021, MassDEP amended 310 CMR 7.40 *Low Emission Vehicle Program* to adopt California's Phase 2 Greenhouse Gas (GHG) regulation for medium- and heavy-duty (MHD) engines and vehicles (Phase 2 GHG), Heavy-duty Omnibus regulation for heavy-duty (HD) engines and vehicles (Heavy-duty Omnibus), and Advanced Clean Trucks regulation for MHD vehicles (ACT). MassDEP's regulations established new motor vehicle emissions standards for MHD engines and vehicles starting with Model Year 2025. The regulations will reduce emissions of criteria pollutants and GHGs from on-road MHD engines and vehicles, improving air quality and reducing emissions that contribute to climate change. Additional background can be found in MassDEP's December 30, 2021, *Background Document on Emergency Regulation Amendments to 310 CMR 7.40 Low Emission Vehicle Program*.² For more information on Heavy-duty Omnibus, see CARB's Final Statement of Reasons.³

¹ The Massachusetts Clean Air Act, M.G.L. c.111, §142K, provides in relevant part:

"...the department, shall adopt motor vehicle emissions standards based on the California's duly promulgated motor vehicle emissions standards of the state of California unless, after a public hearing, the department establishes, based on substantial evidence, that said emissions standards and a compliance program similar to the state of California's will not achieve, in the aggregate, greater motor vehicle pollution reductions than the federal standards and compliance program for any such model year."

Massachusetts General Laws, Chapter 111: Section 142K. Motor vehicle emissions standards.

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section142k>

² <https://www.mass.gov/doc/310-cmr-740-background-document/download>

³ State of California, California Air Resources Board, Heavy-duty Engine and Vehicle Omnibus Regulation, *Final Statement of Reasons for Rulemaking* at <https://ww3.arb.ca.gov/board/rulemaking/hdomnibuslownox/fsor.pdf>

Section 177 of the federal Clean Air Act⁴ requires that if a state adopts the California motor vehicle emission standards, the standards must be “identical to the California standards” for which California received a waiver of preemption from implementing the federal motor vehicle emission standards from the EPA.

III. DESCRIPTION OF AMENDMENTS

1. Heavy-duty Omnibus Initial Model Year

Under Section 177 of the Clean Air Act, states adopting California motor vehicle emission standards may not enforce those regulations until EPA has issued a waiver to California. EPA has not issued a waiver for California’s Heavy-duty Omnibus regulations. In order to provide certainty to all stakeholders and because EPA has not yet issued a waiver for Heavy-duty Omnibus, MassDEP amended the initial model year that Heavy-duty Omnibus is applicable in Massachusetts from model year 2025 to 2026 in 310 CMR 7.40(1)(d)4.

2. Legacy Engine Provisions

On May 31, 2024 California amended the Heavy-duty Omnibus regulations at 13 CCR 1956.8 (*Exhaust Emissions Standards and Test Procedures--1985 and Subsequent Model Heavy-Duty Engines and Vehicles, 2021 and Subsequent Zero-Emission Powertrains, and 2022 and Subsequent Model Heavy-Duty Hybrid Powertrains*), 1971.1 (*On-Board Diagnostic System Requirements--2010 and Subsequent Model-Year Heavy-Duty Engines*) and 1971.5 (*Enforcement of Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model-Year Heavy-Duty Engines*).⁵ MassDEP previously adopted all of these sections except 13 CCR 1971.5, because MassDEP has separate enforcement and penalty authorities.

California amended its regulations because it became aware that engine manufacturers would not produce legacy engines for some truck categories for MYs 2024 through 2026, and it sought to prevent disruptions in the vehicle manufacturing industries. The intent of these amendments is to provide manufacturers with additional compliance flexibilities to ensure adequate availability of HD engines in certain engine families for MYs 2024 through 2026. The amendments also enable a smoother transition to the Heavy-duty Omnibus standards.

Prior to MassDEP’s emergency regulation amendments, the legacy engine provisions did not apply in MY 2026. The amendments now allow each engine manufacturer legacy HD diesel engine sales up to 10% of its total HD diesel engine sales in MY 2026. This option is emissions-neutral because it requires manufacturers to fully offset any emissions increases resulting from the sales of legacy engines by using HD zero-emission (HD-ZE) credits or credits from selling

⁴ U.S. EPA, Title I – Air Pollution Prevention and Control, Part D – Section 177, 42 U.S.C. §7507, <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap85-subchapI-partD-subpartI-sec7507.pdf>

⁵ Public Hearing to Consider the Proposed Amendments to the Heavy-Duty Engine and Vehicle Omnibus Regulation: Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response. https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/hd-omnibus_fsor.pdf
Addendum to the Final Statement of Reasons for Rulemaking, Addendum Prepared: May 31, 2024. https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/addendum_fsor.pdf

engines that are cleaner than the Heavy-duty Omnibus standards, or by conducting projects in disadvantaged communities.⁶

In addition, MassDEP has added a clarifying edit to the regulations to assist regulated parties with implementation of offset compliance options in Title 13 CCR § 1956.8, which was previously adopted by MassDEP in its 2021 adoption of the California Heavy-duty Omnibus regulation. Because there is no definition of “disadvantaged communities” in Title 13 CCR § 1956.8, 310 CMR 7.40(1)(k) was added to clarify that for purposes of conducting projects in disadvantaged communities to offset emissions under Title 13 CCR § 1956.8, the existing following definition of “Disadvantaged Community” in 310 CMR 7.40(1)(b) applies:

Disadvantaged Community.

(a) A Neighborhood that meets one or more of the following criteria:

1. the annual median household income is not more than 65% of the statewide annual median household income;
2. minorities comprise 40% or more of the population;
3. 25% or more of households lack English language proficiency;
4. minorities comprise 25% or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150% of the statewide annual median household income; or

(b) a geographic portion of a Neighborhood designated by the Secretary as an Environmental Justice Population pursuant to M.G.L. c. 30, § 62; provided, however, that a Neighborhood or a geographic portion of a Neighborhood that the Secretary has determined shall not be designated an Environmental Justice Population pursuant to M.G.L. c. 30, § 62 shall not be considered an Environmental Justice Population.

3. Heavy-duty Omnibus Transit Bus Exemption

CARB’s Heavy-duty Omnibus rule includes a diesel-fueled bus and engine exemption process for transit agencies. CARB included this provision because the only manufacturer of diesel-fueled heavy duty urban bus engines had announced that it will no longer produce these types of engines to be certified by California, beginning with the 2024 model year. Transit bus fleets in California are subject to a separate Innovative Clean Transit (ICT) regulation that requires transit agencies to begin the purchase of zero emission (ZE) buses, with the goal of transitioning all transit buses to ZE technology by 2040. When MassDEP adopted Heavy-duty Omnibus in 2021, it did not explicitly exempt transit buses. However, Section 177 of the Clean Air Act requires states that adopt California’s engine and vehicle emissions standards to adopt identical emissions standards. Therefore, MassDEP has now adopted amendments to exempt transit buses from Heavy-duty Omnibus to ensure that Massachusetts’ regulations are consistent with the California Heavy-duty Omnibus regulation. Specifically, MassDEP adopted a definition of “transit agency” and a new provision at 310 CMR 7.40(2)(c)4. exempting new diesel-fueled buses sold to a transit agency in Massachusetts from Heavy-duty Omnibus. Massachusetts has other plans to electrify

⁶ Agreement between California Air Resources Board (“CARB”), the Truck and Engine Manufacturers Association (“EMA”), and the undersigned heavy-duty on-highway (HDOH) manufacturer members of EMA (the “OEMs”). https://ww2.arb.ca.gov/sites/default/files/2023-07/Final%20Agreement%20between%20CARB%20and%20EMA%202023_06_27.pdf

transit buses. For example, the Massachusetts Bay Transportation Agency (MBTA) plans to achieve full bus electrification by 2040.⁷ MassDEP also is assisting Regional Transportation Authorities to electrify their transit buses as described in Beneficiary Mitigation Plans MassDEP has published for using funding Massachusetts received as a result of the Volkswagen diesel emissions testing settlement.⁸

4. Exempt Emergency and Military Vehicles

California Vehicle Code sections 27156.2⁹ and 27156.3¹⁰ exempt certain emergency vehicles from California laws and regulations that apply to “motor vehicle pollution control devices.” Therefore, there are no California standards applicable to such emergency vehicles that MassDEP could adopt (or has adopted), but 310 CMR 7.40 does not explicitly state that these vehicles are exempt. Since Massachusetts must be identical to California and to make these exemptions clear, MassDEP has adopted a reference to California Vehicle Code sections 27156.2 and 27156.3 in a new provision at 310 CMR 7.40(2)(c)3. 310 CMR 7.40(c)2. had already explicitly exempted emergency vehicles from the vehicle emissions standards in 310 CMR 7.40(2)(a), (b), and (d). The new section, 310 CMR 7.40(2)(c)3. contains exemptions for emergency vehicles from the requirements of 310 CMR 7.40(2)(a), (b) and (d) [emission standards](e) through (g) [labeling], (3) [testing] and (4) [warranty]. This new section applies to all vehicles exempted by California Vehicle Code sections 27156.2 and 27156.3). In addition, exemptions from 310 CMR 7.40(2)(e) through (g), (3) and (4) were added to existing 310 CMR 7.40(2)(c)2. (which contains exemptions applicable to passenger cars, light-duty trucks and medium-duty passenger vehicles).^{11,12}

California also exempts military tactical vehicles from California “motor vehicle pollution control device” requirements, and therefore there are no California standards applicable to such vehicles that MassDEP could adopt (or has adopted). To maintain consistency with California, MassDEP has adopted Title 13 California Code of Regulations (CCR) section 1905 *Exclusion and Exemption of Military Tactical Vehicles and Equipment* in 310 CMR 7.40 which exempts military tactical vehicles from 13 CCR in Division 3. Air Resources Board, Chapter 1. Motor Vehicle Pollution Control Devices.¹³ Note that 310 CMR 7.40 already incorporates by reference the exclusion of military tactical support vehicles from Title 17 CCR via *California Greenhouse Gas Exhaust Emission Standards and Test Procedures for 2014 and Subsequent Model Heavy-Duty Vehicles*.¹⁴

⁷ <https://cdn.mbta.com/sites/default/files/2023-07/2023-07-27-fy24-28-mbta-final-cip-public-document-accessible.pdf> and <https://www.mbta.com/projects/better-bus-project>

⁸ <https://www.mass.gov/guides/volkswagen-diesel-settlements-environmental-mitigation>

⁹ https://california.public.law/codes/ca_veh_code_section_27156.2

¹⁰ https://california.public.law/codes/ca_veh_code_section_27156.3

¹¹ California exempts emergency vehicles from emissions standards, which California interprets to be all requirements related to certification - emissions standards, labeling, testing and warranty.

¹² Note that passenger vehicles, light-duty trucks and medium-duty passenger vehicles that qualify as emergency vehicles under 310 CMR 7.40 were already exempt from 310 CMR 7.40(2)(a), (b), and (d).

¹³ See 310 CMR 7.40(1)(c): *Table 1*

¹⁴ <https://ww2.arb.ca.gov/sites/default/files/2022-09/Phase%20%202019%20version.pdf>. See also, 310 CMR 7.40(1)(e).

5. Harmonizing Edits

The 310 CMR 7.40(1) definition of “Model Year” was updated to directly reference California definitions, to ensure consistency with California’s regulations.

The title of a California test procedure listed in 310 CMR 7.40(1)(c): Table 1 was corrected to match California’s title.

IV. IMPACTS OF AMENDMENTS

1. Economic Impacts

The amendments will have no adverse economic impact in Massachusetts. The legacy engine amendments are expected to be cost neutral to manufacturers and vehicle owners over the lifetime of the amendments because the amendments add compliance flexibility that allows manufacturers to continue selling HD diesel engines that meet current emissions standards and requirements.¹⁵

2. Impacts on Massachusetts Municipalities

Pursuant to Executive Order 145, state agencies must assess the fiscal impact of new regulations on the Commonwealth’s municipalities. Since the LEV program is primarily directed toward manufacturers, municipal facilities will be affected by the Heavy-duty Omnibus changes to 310 CMR 7.40 in the same manner as other consumers. The other amendments affect “transit agencies” and emergency vehicles as defined in 310 CMR 7.40 including those operated by municipalities. Because these amendments exempt transit buses and emergency vehicles from certain requirements, the amendments will have no adverse economic impact on municipalities.

3. Massachusetts Environmental Policy Act (MEPA)

Pursuant to 301 CMR 11.03(12) (Massachusetts Environmental Policy Act Regulations), MassDEP is not required to file an Environmental Notification Form (ENF) regarding the amendments because the amendments do not reduce standards for environmental protection, nor do they reduce opportunities for public participation in review processes or public access to information generated or provided in accordance with the regulations.

V. PUBLIC HEARING AND COMMENT

After an emergency regulation is filed with the Massachusetts Secretary of the Commonwealth, in order for that regulation to remain in effect, M.G.L. c. 30A, § 2 requires MassDEP to complete the public process (i.e., the opportunity to review background and technical information for at least 21 days prior to a public hearing) within three months, including filing the permanent regulation if the public comment and hearing process result in changes to the

¹⁵ Public Hearing to Consider the Proposed Amendments to the Heavy-Duty Engine and Vehicle Omnibus Regulation Staff Report: Initial Statement of Reasons Date of Release: August 1, 2023.
<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/isor.pdf>.

emergency regulation. MassDEP has provided notice at least 30 days in advance of the public hearing as required under federal regulations. Public hearings will be held on December 9, 2024. MassDEP will accept written comments until December 19, 2024. The public hearing notice and amendments are available on MassDEP's website at: <https://www.mass.gov/info-details/massdep-public-hearings-comment-opportunities>. For further information, please contact Ngoc Hoang at ngoc.hoang@mass.gov.