



## MEMORANDUM

**TO:** Leah Feldon, Director  
Shannon Davis, Deputy Director  
Ali Mirzakhali, AQ Program Administrator  
Becka Puskas, Interim Manager, Office of Compliance and Enforcement

**Through:** Rachel Sakata, Manager, AQ – Transportation Strategies Section

**From:** Eric Feeley, Diesel Planner, AQ – Transportation Strategies Section

**Date Approved by Administrators:** 7/30/2024

**Subject:** Enforcement Discretion and No Penalty Justification for Heavy-duty Engine and Vehicle Exhaust Emission (Heavy-duty Omnibus) Standards, OAR Chapter 340 Division 261

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### **Background**

The Oregon Environmental Quality Commission adopted the California [Heavy Duty Low NOx Omnibus rule](#) by reference in 2021.<sup>1</sup> This rule required heavy-duty engine and vehicle manufacturers selling products in Oregon to meet tougher NOx and particulate matter emission standards beginning with the 2024 engine model year. The EQC approved a temporary rule delaying implementation of the Heavy-Duty Low NOx Omnibus rule by one year in November 2023. Director Feldon subsequently approved [rules](#) on July 3, 2024, to make the temporary rules permanent.<sup>2</sup> The result of that action is that as of July 13, 2024, manufacturers selling engines and vehicles in Oregon are now required to meet the standards beginning with the 2025 engine model year. In addition, as part of the July 2024 action, Oregon adopted recent California amendments that provide additional compliance flexibilities for manufacturers.

### **Exceptional Circumstances & No Penalty Justification**

DEQ discussions with school bus and solid waste collection fleets as part of the rulemaking process led DEQ to conclude that additional action was necessary that was beyond the scope of the amendments approved by Director Feldon on July 3, 2024. Despite the additional compliance flexibilities for legacy engine sales that were included in the adopted California amendments, the market supply for these specialized new vehicle sectors is likely to continue to be limited. In particular, vendor delivery timelines are currently extending out from 1.5 to 2.5 years.

Due to the above factors, DEQ intends to propose rule amendments in the near-term that would temporarily exempt the school bus and solid waste collection sectors from the current rules. However, a rulemaking by the Environmental Quality Commission or its designee is not anticipated until the first quarter of 2025.

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<sup>1</sup> Final Regulation Order, Amendments to Cal. Code Regs. Tit. 13, §1900 et seq. (Aug 27, 2020)

<sup>2</sup> Oregon Administrative Rules (OAR) Chapter 340, Division 261.

According to DEQ's Enforcement Guidance for Field Staff, delivering for sale a new noncompliant on-highway heavy-duty engine, truck or trailer in violation of the rules in OAR Chapter 340, Division 261 would receive a Pre-Enforcement Notice and referral to the Office of Compliance and Enforcement for penalty assessment if the violation involves more than one vehicle or for the second violation of the requirement in 36 months. Under the same Enforcement Guidance, single violations would receive a Warning Letter. The above-described circumstances are exceptional circumstances that warrant a deviation from the Enforcement Guidance.

### **Recommendation**

I recommend that effective immediately, the Oregon Department of Environmental Quality refrain from pursuing enforcement or assessing civil penalties against entities that manufacture and sell, or deliver for sale, new school bus and solid waste collection vehicle engines in Oregon, in violation of the following rule requirements:

- OAR 340-261-0040 Requirement to Meet California Vehicle Emission Standards
- OAR 340-261-0050 Incorporation by Reference, sections (1), (2) and (3)
- OAR 340-261-0070 Recalls

In addition, I recommend that DEQ refrain from enforcing the legacy engine excess emission offset requirements related to the sale of such new school bus and solid waste collection vehicle engines in Oregon, such that they will be effectively treated as other engine types that are currently exempt from the Omnibus rules (i.e. transit bus diesel engines or emergency vehicle engines). This will result in the increase of the total number of new legacy engines that would be available for sale in Oregon under the Omnibus rule for all other vehicle sectors.

These rule requirements are part of the rules also known as the Heavy-Duty Low NOx Omnibus Rules. I recommend that this enforcement discretion remain in place through the earlier of:

- the end of 2025,
- when the Oregon Environmental Quality Commission or its designee adopts rule amendments, or
- this enforcement discretion memorandum is modified or rescinded.