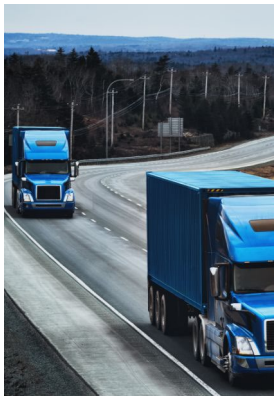
Van Ness Feldman LLP
vnf.com



Important Legal and Policy Developments Continue to Reshape Compliance for Motor Vehicle Manufacturers and Fleet Owners and Operators in the U.S.

FEBRUARY 4, 2026

By Britt Speyer Fleming, Michael Farber, Caitlin Meisenbach, Richard Penna, A.J. Singletary, Paul Libus, and Benjamin Schultz

Against a rapidly shifting regulatory backdrop, the VNF team highlights three developments with immediate compliance implications for motor vehicle manufacturers and fleet owners and operators. Together, these developments are reshaping compliance programs by constraining federal enforceability of California's Heavy-Duty Inspection and Maintenance (HD I/M) Regulation for out-of-state fleets, signaling reduced criminal exposure for aftermarket on-board diagnostic (OBD) tampering, and creating state-federal tension in California as Congressional Review Act (CRA) litigation proceeds alongside California Air Resources Board's (CARB) Drive Forward initiative. Practical effects will touch certification planning, warranty and OBD monitoring, and procurement in the near term.

EPA Partially Disapproves California's Heavy-Duty Inspection and Maintenance Regulation Impacting Fleet Owners and Operators

On January 27, 2026, the Environmental Protection Agency (EPA) finalized a rule partially approving and partially disapproving California's HD I/M Regulation as a revision to the state's State Implementation Plan (SIP) needed to meet federal air quality standards. In a significant limitation, EPA disapproved the rule to the extent it applies to heavy-duty vehicles registered outside California (including foreign-registered vehicles), citing conflicts with the Clean Air Act (CAA) and the U.S. Constitution's Commerce Clause. EPA approved the rule only as it applies to vehicles registered in California, making those provisions federally enforceable. Stakeholders operating or serving heavy-duty fleets nationwide are impacted by the narrowed federal enforceability, the implications for interstate commerce, and how the decision affects ongoing California compliance obligations.

Background and Summary

California's HD I/M program establishes a comprehensive inspection-and-maintenance regime for heavy-duty non-gasoline vehicles over 14,000 pounds operating in California. The program is intended to ensure emissions control systems function properly and are repaired quickly throughout the life of the vehicle. The regulation includes exemptions (e.g., zero-emission, emergency, and military tactical vehicles) and a limited, once-per-year five-day "pass-through" exception requiring pre-approval and documentation.

EPA's final rule approves the HD I/M provisions in the California SIP exclusively for vehicles registered in California and disapproves the State's attempt to regulate out-of-state and out-of-country vehicles through the SIP. EPA found California failed to provide "necessary assurances" under CAA section 110(a)(2)(E)(i) that its SIP

could be implemented consistent with federal law, given the HD I/M rule's extraterritorial reach and burdens on interstate commerce.

Geographic Scope and Interstate Commerce

EPA's decision has nationwide relevance. Because heavy-duty trucking is inherently interstate, EPA determined that approval of California's out-of-state applicability would function as a *de facto* national standard, compelling nationwide compliance and causing duplication and conflict with other states' programs. EPA found the burdens substantial (testing access, downtime, administrative processes, and potential fines), particularly given CARB-approved tester availability predominantly in California and the logistical challenges for out-of-state fleets. EPA concluded these burdens clearly implicate interstate commerce and, if approved in full, would intrude on federal prerogatives by making California's HD I/M requirements federally enforceable against vehicles irrespective of their state of registration based solely on potential passage through California.

Impact and Next Steps

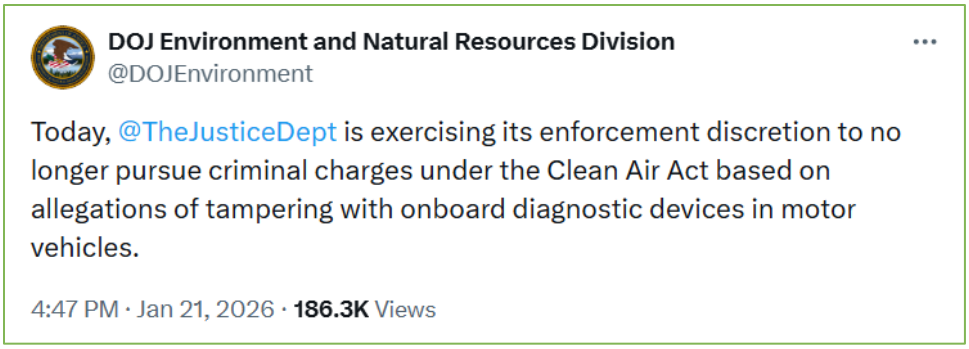
California-registered heavy-duty fleets remain subject to the HD I/M program obligations, including periodic emissions testing, reporting, and compliance with OBD device monitoring requirements, under the provisions EPA approved. EPA's disapproval means the extraterritorial elements are not part of the SIP and cannot be enforced under federal law against fleets registered outside of California. However, California may attempt to enforce its program on those fleets as a matter of state law; EPA's partial disapproval explicitly does not purport to decide whether state enforcement would be consistent with the Commerce Clause. In weighing any such enforcement action, California will need to contend with the type of conflicts and burdens that EPA emphasized in its partial disapproval.

Practically, manufacturers may see continued demand from California-registered fleets for diagnostics, OBD-capable devices, and maintenance support aligned with HD I/M compliance. However, the federal disapproval of extraterritorial application limits the immediate need for nationwide adaptation solely to meet California's I/M program.

This recent disapproval of California's HD I/M program for out-of-state and foreign registered fleets is yet another effort by the Administration to limit California's regulatory reach. EPA's final rule is effective 30 days after Federal Register publication; signature occurred on January 27, 2026.

DOJ Will No Longer Pursue Criminal Enforcement for OBD Tampering Violations

The Environment and Natural Resources Division (ENRD) of the U.S. Department of Justice (DOJ) posted on X on January 21, 2026, that it would no longer pursue criminal enforcement of CAA violations based on motor vehicle tampering allegations:



CBS News reported the next morning that an internal memo from DOJ Deputy Attorney General Todd Blanche ordered the end of all new and ongoing criminal enforcement cases relating to OBD tampering and the sale of "defeat devices" (i.e., devices that disable or alter the function of air pollution controls on motor vehicles). Additional news coverage has followed, but the DOJ memo has not yet been made available for public review. Reports also indicate that EPA has its own recent internal memo related to defeat devices; less is known about what EPA's memo says.

The recent shift in the government's position likely mirrors the concerns expressed during a September 16, 2025 hearing in front of the House of Representatives' Committee on Oversight and Government Reform's Subcommittee on Federal Law Enforcement. Without access to the DOJ or EPA memos, however, some confusion has arisen about the scope of the policy change.

While some news coverage has linked this change to the government's approach to vehicle manufacturer cases, such as the Volkswagen diesel emissions case, that may not bear out. ENRD's social media post and the available quotes from the DOJ memo seem aimed at the allegations typical of *aftermarket* (i.e., post-retail installed) defeat device cases. While criminal enforcement in the aftermarket defeat device context has relied on a theory that vehicle OBD systems are "emissions control monitoring devices" that are "required to be maintained" under the CAA, the violations typically alleged in the government's criminal enforcement cases against vehicle manufacturers are more wide-ranging. Criminal enforcement against various criminal defendants in the Volkswagen matter, for example, alleged violations such as conspiracy to defraud the United States, wire fraud, and false statements to the government.

It also remains to be seen whether this policy shift forecloses all criminal enforcement in the aftermarket parts sector or only certain types of violations. For example, litigation is ongoing in *United States of America v. John Wesley Owens, et al.*, in U.S. District Court for the Eastern District of Washington. A recent filing from defense counsel in that case indicates that the government plans to file a superseding indictment that would no longer pursue substantive criminal charges under the CAA but that would continue to allege smuggling violations, predicated on civil violations of the CAA.[1]

Regardless, this shift represents a major change to federal enforcement in the aftermarket parts sector. From 2020 to 2023, aftermarket defeat devices were an

[1] Notice of Withdrawal of Defendants' Motion to Dismiss Indictment for Failure to State and Offense at 2-3, *U.S. v. John Wesley Owens, et al*, No. 2:24-cr-00140-TOR (E.D. Wash. Jan. 22, 2026).

enforcement priority for EPA; during that time the government "completed 17 criminal cases resulting in penalties totaling $5.6 million, $1.2 million in restitution, $438,000 in environmental projects, and 54 months of incarceration." That work had continued even after the end of the EPA initiative, with DOJ reporting a plea deal in one such case as late as September 16, 2025.

Aftermarket parts companies and auto shops should note that civil enforcement related to tampering and aftermarket defeat devices remains in effect. Those violations are currently subject to penalties of up to $5,911 per vehicle or defeat device.

Litigation Over CRA Disapproval of California's Waivers Continues

In June 2025, Congress passed three CRA resolutions disapproving EPA waivers that had allowed the CARB to enforce the Advanced Clean Cars II (ACC II), "Omnibus" Low-NOx, and Advanced Clean Trucks (ACT) regulations. We previously summarized the impact of these CRA resolutions and outlined practical considerations for heavy-duty vehicle and engine manufacturers.

The CRA resolutions prompted multiple lawsuits, all of which remain ongoing. Below we provide a status update on the key cases.

Case	Key Allegations	Status
California et al. v. United States et al., No. 4:25-cv-04966 (N.D. Cal.)	California argues that the EPA waiver decisions are adjudicatory orders not subject to the CRA, and that the CRA resolutions are unconstitutional, violating separation of powers and federalism. California seeks a declaration that its waivers remain valid and enforceable, and that the state retains authority to implement its emissions standards.	Oral argument is scheduled for February 19 on the motion to dismiss the case filed by the DOJ. DOJ argues that the case is non-justiciable because the CRA bars judicial review and courts cannot influence Congress's procedures that classify EPA waivers as rules or orders within the meaning of the CRA.
American Free Enterprise Chamber of Commerce v. EPA, (9th Cir.) Docket No. 25-106 (ACC II) Docket No. 25-89 (Omnibus Low NOx)	In separate cases in the Ninth Circuit, the American Free Enterprise Chamber of Commerce (AmFree) filed petitions for review of the Biden EPA's decision to grant preemption waivers for ACC II and Omnibus Low-NOx in January 2025.	AmFree and EPA filed motions to dismiss the cases as moot because the CRA resolutions disapprove the ACC II and Omnibus Low NOx waivers. California, intervening, argues the court should hold the cases in abeyance until a ruling is issued in *California v. United States*.

Daimler Truck North America, LLC et al. v. CARB et al., No. 2:25-cv-02255 (E.D. Cal.)	Original equipment manufacturers (OEMs) seek declaratory and injunctive relief, arguing they are caught between conflicting federal and state directives. DOJ's cease-and-desist letters demand that OEMs not comply with CARB's preempted standards, while CARB insists its regulations remain enforceable. Plaintiffs specifically challenge the enforceability of the Clean Truck Partnership (CTP). DOJ supports the OEMs' position that CARB's standards are preempted and unenforceable.	The court granted OEMs' request for preliminary injunction on CARB's CTP. The court agreed with OEMs that CARB's state court lawsuit to enforce the CTP[2] was an attempt to enforce emissions rules despite the CRA resolutions. The court also rejected OEMs' request to enjoin the CARB regulations disapproved by the CRA resolutions. The court explained that CARB's August 2025 manufacturer's advisory notice (MAC) states that manufacturers may sell vehicles certified to federal standards, which indicates that manufacturers will not suffer any harm absent an injunction.
American Free Enterprise Chamber of Commerce v. Engine Manufacturers Association et al., No. 2:25-cv-03255 (E.D. Cal.)	AmFree alleges that the CTP constitutes an unlawful attempt to enforce state emissions standards that are preempted by federal law, and that they have anticompetitive effects. The DOJ, intervening, argues that CARB's continued enforcement of the ACC II, ACT, Omnibus, and CTP is preempted by the CAA following the CRA resolutions, and seeks to enjoin CARB from enforcing these standards and directives.	Case transferred from Northern District of Illinois in November 2025.

While litigation is ongoing, CARB has launched the "Drive Forward" initiative to promote mass adoption of zero-emission vehicles (ZEVs) in both the light- and heavy-duty sectors through measures that do not replicate ACC II. In addition to incentive programs, outreach, and education, Drive Forward will support the development of light-, medium- and heavy-duty vehicle regulations. Any such regulations adopting vehicle emission standards will require a preemption waiver

[2] *See California Air Resources Board v. Daimler Truck North America, LLC, et al.*, No. 25-cv-51420 (Alameda County Super. Ct.) (seeking damages and specific performance of the CTP).

Van Ness Feldman LLP
vnf.com

from EPA, and the CRA prohibits agencies from issuing rules that are "substantially the same" as those disapproved by a CRA resolution. So, if the CRA resolutions are upheld, regulations emerging from the Drive Forward initiative are likely to face legal challenges over whether they are substantially the same as ACC II, the Omnibus Low-NOx, and ACT.

For More Information

VNF closely monitors and counsels clients on compliance with federal and California mobile source requirements and enforcement. If you would like more information on how these developments may impact your business, please contact Britt Speyer Fleming, Michael Farber, or any member of the firm's Mobile Source or Litigation practice groups in Washington, D.C., at (202) 298-1800.

© 2026 Van Ness Feldman, LLP. All Rights Reserved. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.