



## Environment, Land Use & Natural Resources ADVISORY ■

**AUGUST 31, 2023**

California Marches on with Ambitious Advanced Clean Fleet Rules; Effective Date Looms

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Developments over the last month may impact the future of a key part of California’s ambitious Advanced Clean Fleet (ACF) program to transition to 100% zero-emission (ZE) heavy-duty trucks within the state. These developments highlight the tension between California’s regulatory efforts and the ability of regulated entities to meet forthcoming compliance deadlines and benchmarks that apply to truck makers and fleet owners across the state and nation. Some of these de facto deadlines for truck purchase orders could come as soon as early September.

### **California Reaches Landmark Deal on ZEVs and NOx Emissions with Nation’s Truck Makers**

Last month, the California Air Resources Board (CARB) and many of the country’s leading truck manufacturers [reached a deal](#) involving both the ACF and CARB’s stringent nitrogen oxide (NOx) emissions standards. Under the terms of the deal, known as the [Clean Truck Partnership](#), CARB agreed to:

- Provide greater compliance flexibility for its NOx emissions standards for model years 2024–2026 (though the underlying emissions targets will not change).
- Align its NOx emission standards for model year 2027 with those set by the U.S. Environmental Protection Agency (EPA).
- Provide four years of lead time and three years of regulatory stability before implementing any new emissions regulations for heavy-duty, on-highway vehicles.

In exchange, the manufacturers committed to meeting the phased-in transition to 100% sale and use of ZE and criteria pollutant trucks by 2045, as required by the Advanced Clean Truck (ACT) rules. These ACT rules complement the ACF rules but apply to truck and engine manufacturers rather than fleet operators. Crucially, the deal requires the manufacturers to comply with the ACT benchmarks “irrespective of the outcome of any litigation challenging” the rules. That is, the manufacturers have agreed to meet CARB’s ambitious ZE goals, even if the program itself is overturned by a court.

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## Western States Petroleum Association Files Suit Challenging the ACF

On July 21, the Western States Petroleum Association (WSPA) [filed a complaint](#) challenging the ACF in the California Superior Court for Fresno County. The complaint alleges that the ACF violates both California and federal laws, including the California Health and Safety Code, California Environmental Quality Act (CEQA), California Administrative Procedure Act, the principle of separation of powers, vested rights of business owners in California, and U.S. Constitution.

The complaint asks the court to issue a writ of mandate directing CARB to vacate and set aside its approval of the ACF and to declare the rules “void, invalid, and of no legal effect.”

This new suit comes just a few weeks after 38 states began a [pitched battle with the EPA over the ACT rules](#). Nineteen states filed a suit in the U.S. Court of Appeals for the D.C. Circuit challenging the EPA’s decision to grant a waiver of the Clean Air Act’s preemption provisions, allowing California to implement its ACT program. Seventeen states, along with the District of Columbia, New York City, and Los Angeles, have intervened to defend the EPA and the waiver.

## CARB Prepares to Resubmit Regulatory Package to California Office of Administrative Law

Perhaps most significantly, on July 26, [CARB abruptly withdrew](#) the package of ACF regulations before the rules could be finalized by the California Office of Administrative Law (OAL). While CARB did not provide a reason for the withdrawal at the time, it vowed to “resubmit the Final Package at a subsequent date.” This move created further uncertainty among the regulated community, given the fast-approaching deadlines embodied in the ACF, some of which will come as soon as January 1, 2024—just four months from now. For example, some fleets subject to the rule, including fleets with only limited operations in California, can only add ZE trucks to their fleet beginning in 2024.

On August 4, [CARB issued a Second Notice of Public Availability](#), including some minor modifications to the regulatory text, with a comment deadline of August 21. CARB will need to update its Final Statement of Reasons with responses to these comments before resubmitting the package to the OAL. We anticipate that CARB will resubmit the package and that the OAL will act quickly to finalize the regulation. This means that the critical “effective date” of the regulation could be as soon as early September. The ACF’s effective date acts as an initial deadline in the rule. For example, new internal combustion engine trucks can only be added to a fleet in 2024 if the purchase order has been placed before the effective date (depending on the fleet’s compliance obligations). Purchase orders for ZE trucks must also be completed by the effective date to be eligible for a vehicle delivery delay extension due to delay of a ZE truck necessary to show compliance with applicable deadlines.

In the meantime, CARB held a [public meeting on August 22](#) to discuss the formation of a Truck Regulations Advisory Committee, which is intended to help with implementation (and perhaps reconsideration) of the ACF regulations.

Several states have signaled their intention to follow California's lead in adopting ZE truck manufacturing and fleet operating mandates, with some states well on their way to adopting the ACT as a precursor to the ACF regulations.

Alston & Bird's Environment, Land Use & Natural Resources Group is actively monitoring these topics for developments and stands ready to help clients understand the shifting landscape and best position themselves for success.

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