

Procopio Perspectives Podcast

Navigating California's Green Roadmap: Unpacking the 2024 Zero Emission Fleet Mandate

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Host: Welcome to Procopio Perspectives, a podcast featuring award-winning corporate and litigation attorneys providing useful legal insights on the latest issues of the day. Now, here's your host.

Kevin Wilson: Hello everyone. My name is Kevin Wilson and I'm Chief Marketing Officer at Procopio. We are in Procopio's Environmental and Energy Law podcast. [00:00:30] I'm here today with Procopio partner John Lormon. John is leader of Procopio's Environmental and Energy Practice Group, and we're also joined today by Procopio Associate Matt Abbott. Matt is also a member of Procopio's Energy and Environmental Practice Group. We are going to talk a little bit today and just have a conversation around the upcoming California Air Resource Board's pending Advanced Clean Fleet regulation, [00:01:00] and in particular, its impact on state and local government agency fleets. And please do note, today's podcast is part one of three. In part two, we'll discuss clean fleet regulations on high priority fleets, and in our third podcast we'll discuss the impact on drayage truck fleets.

Okay, so today, we'll be discussing the California Air Resource Board's recent adoption [00:01:30] of the Advanced Clean Fleets regulation. Procopio's Energy and Environmental Practice Group has extensive experience with the ACF regulation. John and Matt actually submitted written comments and John provided oral testimony during the April 28th CARB meeting in which the board approved the regulation and Procopio is currently working with a number of clients to provide ACF compliance guidance. Okay, let's get the show [00:02:00] on the road as they say. John, can you provide a basic overview of the advanced Clean Fleets regulation?

John Lormon: Yes, Kevin. Thank you very much. The purpose of the Advanced Clean Fleet regulation is to be a part of the California Air Resources Board, which we'll refer to as CARB, C-A-R-B, effort to reduce carbon emissions from the mobile sector. And CARB looks through its [00:02:30] scoping plan economy wide at reducing carbon in California. This particular regulation focuses on fleet vehicles that are trucks, medium heavy duty trucks at 8,500 pounds and above, class 2B and above type trucks. And it regulates the state and local government agency fleets, but it also, under this regulation, [00:03:00] regulates high priority private sector fleets of certain sizes and any federal government fleet as well as drayage trucks. It looks at border issues as well.

There are importantly companion regulations that CARB adopted previously that have impacts to the state and local government and their efforts to comply with the Advanced Clean Fleet [00:03:30] requirements. Those are the advanced clean truck regulation and the omnibus regulation. Today, we're focusing on the ACF regulation for state and local government agency fleets, but we will talk later in this podcast about those other two regulations.

Kevin Wilson: Thank you, John. Matt, over to you. What would you say are the basic requirements for state and local government [00:04:00] fleets under the ACF regulation?

Matt Abbot: Thanks, Kevin. First, the ACF regulation applies to all state and local government agencies with jurisdiction in California that own, lease or operate at least one vehicle heavier than 8,500 pounds in the state. So that's a vehicle heavier than a light duty vehicle or a class 2B through class eight vehicle. Now there are [00:04:30] two compliance options under the ACF regulation. The first option requires that as of January 1st, 2024, 50% of the total number of vehicle purchases for the California fleet in each calendar year must be zero emission vehicles. And starting January 1st, 2027, 100% of fleet vehicle purchases must be ZEVs. Until 2035 near zero emission [00:05:00] vehicles or certain hybrid vehicles will count the same as ZEVs for compliance purposes. There's also a second option called the ZEV milestones option that fleets may choose as a compliance path. Here until January 1st, 2030, fleet owners may elect to comply with this option in place of the default compliance option that I just discussed.

Under the ZEV milestones option, beginning on January 1st, 2025, [00:05:30] fleet owners must have an increasing percentage of ZEVs in each of three different vehicle milestone groups from 2025 through 2042. So for example, vehicles in milestone group one such as box trucks and light duty package delivery vehicles must be 10% ZEV in 2025, 50% ZEV in 2031 and 100% ZEV in 2035. [00:06:00] Heavier group three vehicles such as [inaudible 00:06:03] tractors and specialty vehicles must be 10% ZEV in 2030, 50% ZEV in 2036 and 100% ZEV in 2042. So the heavier the vehicle, the more time fleets will have before those vehicles must be ZEVs.

Now under the ACF regulation, there are exemptions to account for certain types of vehicles and certain circumstances. For example, [00:06:30] some vehicles like emergency vehicles and military vehicles are not subject to the regulation. In addition, there are exemptions for the following circumstances. So there's a backup vehicle exemption for vehicles that are operated less than 1,000 miles per year. There's a daily use exemption for when no battery electric vehicle exists to meet the daily usage needs of an existing vehicle in the same configuration. There's a ZEV infrastructure [00:07:00] delay exemption where if a fleet owner experiences construction delays beyond their control when installing ZEV fueling infrastructure, they would qualify for that exemption. There's a site electrification delay exemption, which a fleet owner may request if a utility provider cannot provide power to the charging site. There's a purchase exemption for when a particular ZEV is not available based on CARB's purchase exemption [00:07:30] list or subject to an

application by the fleet owner. And then finally, there's a mutual aid assistance exemption for fleet owners operating under a mutual aid agreement to assist other entities during declared emergency events.

And then the last thing I want to mention here is that there are substantial reporting and record keeping requirements and penalty provisions under the ACF regulation. So there's an annual report required by April 1st of [00:08:00] each year beginning in 2024, and fleets must also report any changes that is additions to or removals from the fleet within 30 days of the change. Fleets must keep detailed documentation records for at least five years and there are enforcement provisions in the form of penalties for fleets who fail to comply with the regulation or who fail to submit timely reports.

Kevin Wilson: Okay. Well, thank you, Matt. Thank you very much. [00:08:30] Certainly a lot to consider and unpack here and certainly seems like a fairly complicated regulation. John, what would you say are the biggest concerns that government fleets should have about this regulation?

John Lormon: The first thing is to make sure you have a program that will match the requirements of the rule. And because these requirements are new, the governmental agencies [00:09:00] may not yet have a program or a program that is current, if you will. There's been talk about this rule for a few years, but we're seeing many changes going on regarding this rule and related rules that we'll talk a little further about in this podcast that could affect a program that you have in place or will affect a program you need to put in place. So there's a timing issue with January one fast [00:09:30] approaching. So you need to understand what's required of me, when. Then there's the compliance option, which path will you choose which fits best with your organization of your fleet management? Is it going to be a model year approach or the milestone approach that Matt outlined previously? Those are important to know which one you can reasonably meet and what's preferred. So you've got to assess your fleet [00:10:00] and plug in which option is best and then make sure you comply with that option.

There's also, even if you have a program and you've done a detailed assessment and picked a compliance option, will you be able to satisfy the obligations of the rule if there are not fleet vehicles available that are ZEV vehicles or if not ZEV that are permitted internal [00:10:30] combustion diesel engines, ICEs, we'll call them. So it's pretty clear there are issues about availability of the engines, both electric and the near ZEVs if there's a natural gas option or the internal combustion option, and we'll talk about why that may have restrictions.

You have issues with infrastructure and do you have a power supply to the given facility [00:11:00] that can charge the vehicles? So you'll need your regular diesel or liquid fuel infrastructure and now you've got to add on top of that in this transition period, your ZEV infrastructure. And in order to provide the power, you can't just build the infrastructure at your facility if that power is not being delivered by the utility. Some of the utilities are saying it's going

to [00:11:30] take 12 to 24 months to provide some facilities with the power that they're asking to have. So that's an issue that is a concern.

Sometimes employees take some of the medium-sized trucks home, how will those be charged? There's a range issue. How far will these trucks go and who's going to manage that range in order for us to reliably provide services like street sweeping, some fire prevention services, some [00:12:00] vacuum trucks, some trash trucks services? So that has to be looked at. And then there are the trigger dates that come with the record keeping, reporting that add management obligations and that have sanctions if you fail to have that program and implement it properly. So those are just some of the issues that I think the governmental fleets need to be concerned with.

Kevin Wilson: Okay, [00:12:30] thank you. Very helpful. John. There's been mention of two companion regulations, the Advanced Clean Truck regulation and the Omnibus regulation. Matt, could you explain how do those regulation impact the ACF regulation?

Matt Abbot: The ACT or Advanced Clean Trucks and omnibus regulations are manufacturer requirements that are currently in effect. They're both meant [00:13:00] to accelerate the development and production of zero emission vehicles and powertrains so that a sufficient number of ZEVs will be available to enable ACF compliance. So first, the ACT regulation requires manufacturers to sell an increasing percentage of ZEVs in California from 2024 through 2035. The ACT regulations based on a cap-and-trade type system in which [00:13:30] manufacturers incur deficits based on ICE vehicle sales and they earn credits based on ZEV sales, which they can then use to offset those deficits. These credits can be banked, traded and transferred.

The second regulation that you mentioned is the omnibus regulation or the heavy duty engine and vehicle omnibus regulation. This regulation sets more stringent nitrogen oxide and [00:14:00] particulate matter emission standards for on-road heavy duty vehicles for model years '24 through '31. Like the ACT regulation, the omnibus regulation creates a similar cap-and-trade system in which deficits incurred by legacy or non-omnibus compliant diesel engines must be offset by NOX or PM credits, which can come from a variety of sources including omnibus compliant [00:14:30] diesel engines or ZEV powertrains or if a sufficient number of credits cannot be purchased at a fair market price from projects targeted at disadvantaged communities.

Again, these regulations are both meant to incentivize manufacturers to develop enough ZEVs to make the ACF regulation work. But one of the things we're seeing is that the omnibus regulation is causing some manufacturers to scale back the sale [00:15:00] of some internal combustion engines in the California market such that ICE vehicles may not be available even when a valid exemption exists under the ACF regulation. So for example, if a fleet needs to purchase a street sweeper and it has a valid exemption to purchase an internal combustion engine street sweeper under the ACF regulation, there may actually be a circumstance where no street sweeper either ICE

[00:15:30] or ZEV is available because engine manufacturers are trying to limit deficits under the omnibus regulation.

Kevin Wilson: Okay. Thank you, Matt. So those two regulations, as you say already in effect. John, so the ACF regulation has been adopted by CARB, but the rule will not be in effect until it is finalized by the Office of Administrative Law. Is that correct?

John Lormon: Yes, that is Kevin. [00:16:00] That is correct. A quick summary of the rule, as I mentioned earlier, it's been in progress for a few years. It's all part of the larger mobile source carbon reduction. This particular rule, along with the locomotive rule, was approved by the board, California Resources Board on April 28th of this year. And CARB then sent that adopted by the board rule, [00:16:30] over to the California Office of Administrative Law to make sure it complied with all the government code criteria for a regulation to satisfy Administrative Procedures Act. When they sent it over to OAL, they asked for an expedited effective date. OAL set July 27th as a date when they would issue their decision on whether it should go into effect or not. And on [00:17:00] July 26, CARB asked them to hold off from issuing or making the rule effective. They then reopened the rule for some limited modifications by staff that were proposed, that those proposed modifications went out for a 15-day public review and comment.

And then in August, that public comment closed and CARB then looked [00:17:30] at those comments and resubmitted to the Office of Administrative Law, the revised rule on August 30th or two days ago. That rule since CARB previously asked for expedited effective date is likely to become effective within the next few months. Could be this month, next month, but fairly soon.

It should be noted there is at least one legal challenge to this [00:18:00] regulation. The Western States Trucking Association recently filed a writ asserting that CARB violated CEQA by failing to perform a lifecycle analysis of the GHG emissions associated with the ACF regulation. I won't go into the details of that argument or other aspects of it, but that could have an impact on the rule becoming effective if they were [00:18:30] to seek a stay and be granted one. It's probably unlikely that if they did seek one they'll get it. But I can't say for sure, just because stays are often hard hills to climb by the applicant, but that's out there. So you can see there's a lot of dynamism surrounding this rule and you really have got to stay tuned in on pretty much a daily basis till things settle out.

Kevin Wilson: [00:19:00] Okay, John, thank you. So pending, but likely coming soon. Quite soon. Well Matt, we have covered a lot of ground as we've mentioned. Lots to consider, lots to unpack here. What do government entities need to know right now about the ACF regulation?

Matt Abbot: Well, I think the first thing they need to know is that it's approaching very quickly. Like John said, it's going to take effect very [00:19:30] soon and the requirements begin January 1st, 2024. It's also complicated. State and local

government agencies need to fully understand the rule and they need to begin planning now with regard to compliance and reporting obligations. So they need to understand what the requirements are and they need to figure out how they're going to comply, which of those compliance options they're going to choose. They also need to understand that the concerns that John discussed [00:20:00] about the implementation of the ACF regulation as related to vehicle availability, infrastructure readiness, charging capability, range cost is a very big one. We're finding that where ZEVs do exist, for example, if you have an electrified street sweeper that is available, it costs significantly more. We've seen up to four times as much as its internal combustion engine counterparts.

So government agencies need to start planning for that now [00:20:30] when they decide to update their fleets. So one thing CARB has done to help with this implementation is that they've established the truck regulation advisory committee and the track committee is meant to help clarify the ACF rule provisions help with outreach, providing information to covered entities and also to help with compliance in the border region. So what CARB is going to do is they're going to send out fairly [00:21:00] soon, an application to folks who are interested in joining and becoming a part of the track committee in order to help shape those rule provisions and to clarify requirements under the regulation as it moves forward. Finally, if any covered entities are interested in submitting a written comment in response to the proposed omnibus regulation amendments, they need to remember that September 18th deadline that's fast approaching for the comment.

Kevin Wilson: [00:21:30] Very good. Very good. Thank you, Matt.

John Lormon: Kevin, may I add one additional comment that occurred to me?

Kevin Wilson: Please do, John. Please do.

John Lormon: I think it's important for the state and local government fleets to make sure if they hear changes might've been made by the CARB staff or through settlements that might've occurred with the engine manufacturers and CARB, that they make sure that whatever benefit they [00:22:00] might hear that came out of either of those processes, that they're one of the fleets to which that benefit applies. Because remember at the beginning, we said that this rule applies to state and local government fleets. It applies to high priority and federal government fleets and to drayage. So there may be exceptions or relaxations or modifications that come up that you hear about [00:22:30] and say, "Oh, great, we're safe." But if you look deeper, it may not apply to your fleets. So you've got to be very careful in your monitoring.

Kevin Wilson: Okay, thank you. Thank you for that, John. More broadly, John, no doubt, quite a few of our listeners or listeners to this podcast may well have some questions about this regulation and perhaps likely be in need of some support when it comes to navigating these regulations. How can [00:23:00] Procopio's Environmental and Energy Law Group provide, what support is available from Procopio, John, to help?



John Lormon: I think first, to provide accurate and updated information because so involved with this and the related regulations that we're current day by day on these things. We appreciate the interconnectivity of these things. We understand the state [00:23:30] and local government fleet issues. We can also help those entities or the other entities we mentioned in terms of possibly participating in regulatory process, either by helping them be aware and submitting requests or submitting written comments as we have done with some of our clients, we can advocate through you or with you for relaxed applications due to circumstances which make it [00:24:00] impossible or economically or practically impossible to comply, so that you're not subjected to enforcement. We can interface with other like-minded, regulated entities to perhaps provide some coordinated support for your concern and submit comments in perhaps a greater leveraged fashion by any such group expression of concern.

Kevin Wilson: Very good.

John Lormon: Matt, [00:24:30] do you have anything else I didn't think of here?

Matt Abbot: No, I think you covered it, John. And we're standing by and ready to help.

Kevin Wilson: Thank you. Very good. Well, I'd say that concludes today's podcast, part one of the three part series. So thank you to all of our listeners for tuning in, and thank you so much, John and Matt for providing so much valuable and insightful information here today. So we'll see you back here again for part two of the series, sometime [00:25:00] very soon, where we'll be discussing Clean Fleet Regulations on high priority fleets. And as John has indicated, in the meantime, if you have any questions on the regulations, please feel free to reach out to John Lormon or Matt Abbott directly. You can find them on Procopio's website. That's procopio.com. Again, thank you all for listening and don't forget to tune in for part two of this series very [00:25:30] soon.

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