CLIENT ALERTS & INSIGHTS

Silver Lining or Smoggy Trap for the Unwary? California Temporarily Delays Enforcement of its Advanced Clean Fleets Regulation

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The Advanced Clean Fleets (“ACF") regulation (“ACF Regulation") applies to truck fleets and imposes requirements on fleets to register their vehicles to monitor and facilitate the transition of fleet vehicles from internal combustion vehicles to zero emission vehicles. The ACF Regulation’s reporting requirements were set to take effect on December 31, 2023, for drayage fleets and on February 1, 2024, for high priority fleets. High priority fleets are fleets that own, operate, or direct at least one vehicle in California and have either $50 million or more in gross annual revenue or own, operate, or have common ownership or control of a total of fifty (50) or more vehicles.

The ACF Regulation impacts medium-duty and heavy-duty on-road vehicles with a gross vehicle weight rating (“GVWR”) greater than 8,500 pounds, off-road yard tractors, and light-duty mail and package delivery vehicles.

The California Air Resources Board (“CARB”) is granting drayage fleets and high-priority fleets immediate, temporary relief from the reporting requirements of the ACF Regulation.

Why did CARB Delay Enforcement of the ACF Regulation?

On December 28, 2023, CARB issued an Enforcement Notice announcing that it would temporarily withhold enforcement of the ACF Regulation’s high-priority and drayage fleet reporting requirements until the U.S. Environmental Protection Agency (“EPA”) grants a preemption waiver appliable to these regulatory provisions or determines that a waiver is not necessary. The Enforcement Notice and temporary delay follows the California Trucking Association’s (“CTA”) lawsuit against CARB requesting that the court prevent enforcement of the ACF Regulation against drayage and high priority fleets. CARB’s decision to delay enforcement of the ACF Regulation was part of an agreement with the CTA whereby the CTA agreed not to file a preliminary injunction while the waiver request is pending with the EPA. Nevertheless, please note that the CTA’s litigation with respect to the ACF Regulation remains ongoing.

What is CARB Saying Following its Temporary Delay of Enforcement?

In the Enforcement Notice, CARB encouraged fleet operators to comply with the ACF Regulation's reporting requirements while its waiver request is pending with the EPA. CARB further reserved its ability to remove non-compliant vehicles added to drayage and high priority fleets while its waiver request is pending. CARB also stated that drayage and high priority fleets adding non-compliant vehicles after January 1, 2024, should expect to receive a notice from CARB noting that CARB will remove these vehicles if the EPA grants the request waiver or determines that a waiver is unnecessary.

What Might I Consider Doing in Light of CARB's Temporary Delay?

A determination regarding a waiver from the EPA is not expected for several months or even up to a year. CARB stated that it may restrict combustion-powered vehicles added into service after December 31, 2023, should the EPA grant California a waiver or determine that no waiver is required. Thus, while drayage and high priority fleets will not be precluded from adding vehicles with internal combustion engines, these vehicles could be restricted from operation and "de-registered" once the EPA reaches a decision on the waiver. Accordingly, CARB's Enforcement Notice and other representations demonstrates CARB's confidence that CARB will either receive a preemption waiver or the EPA will determine that a waiver is unnecessary, thereby allowing CARB to move forward with the ACF Regulation. Until the EPA makes a determination, CARB is still seeking voluntary compliance with the ACF's temporarily delayed reporting requirements. Those entities that own, operate, or direct drayage fleets and high priority fleets would be wise to use the enforcement delay to assess potential compliance obligations under the ACF Regulation or request an extension or exemption available under the ACF Regulation.

Conclusion

Although enforcement of the ACF Regulation's reporting requirements for drayage and high priority fleets is temporarily delayed, CARB will continue to seek a waiver for enforcing the ACF Regulation from the EPA. We fully expect CARB to enforce the ACF Regulation's provisions if a waiver is granted, or if the EPA determines that such a waiver is unnecessary. Benesch will continue to monitor CARB's temporary delay of enforcement of the ACF Regulation and the EPA's decision on the waiver.

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