

State Legislatures Confront California Vehicle Emissions Regulations

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Authors: [Jonathan R. Todd](#), [Robert \(Bob\) Pleines, Jr.](#)

Motor carriers and equipment manufacturers are closely watching federal and California Air Resources Board (CARB) developments in the future of vehicle emissions. The headline has long been that a transition from internal combustion engines to clean power sources is coming and relatively date-certain, and so production and fleets must take notice. A number of challenges to this forced approach have gained attention, although most rely upon litigation as the tool for change. Now, other states are looking to their legislatures to pick sides on the issue by following California's lead or by clearly challenge the federal and CARB trendline.

Recent developments and decisions by the U.S. Environmental Protection Agency (EPA), U.S. Department of Transportation (DOT), and Federal Highway Administration are driving states to take a stance on whether they will adopt or oppose regulations that increasingly impact their citizens. Last year, the EPA granted a waiver excluding certain CARB restrictions from federal preemption under the Clean Air Act. The impact of this waiver means that a number of California's regulations can be more restrictive than federal law, including the Heavy-Duty Vehicle and Engine Emission Warranty Regulations and Maintenance Provisions, Advanced Clean Trucks Regulation, Zero Emission Airport Shuttle Regulation, and Zero-Emission Power Train Certification Regulation. Another CARB regulation, the Advanced Clean Fleets Regulation, is currently pending a preemption waiver by the EPA with a decision expected later this year. Further, the DOT and Federal Highway Administration issued a rule requiring the states to establish targets for reducing carbon dioxide emissions.

While California leads the way in electric vehicle transitions and emissions reduction regulations, many other states are adopting CARB's regulations verbatim or are referencing CARB's regulation in their own legislation. For example, 10 states have announced that they adopted or are adopting CARB's regulations applicable to heavy-duty vehicle standards, and another 17 states have adopted or are adopting CARB's light-duty vehicle regulations. A number of other states are also currently contemplating whether to adopt CARB's regulations.

Not all states are open to adopting CARB's regulations and complying with the federal government's push to transition to electric vehicles. Currently, 21 states are suing the Biden Administration, DOT, and Federal Highway Administration and their efforts to regulate greenhouse gas emissions. In addition to litigation, some states are turning to their own legislation as a means to further their interests and prohibit the implementation of CARB's regulations to their state.

On December 28, 2023, Ohio's governor, Mike DeWine, signed House Bill 201 into law, placing Ohio in opposition to the implementation of CARB's regulations. House Bill 201 will go into effect in March 2024 and will "prohibit a state agency, county, or township from restricting the sale or use of

a motor vehicle based on the energy source used to power the motor vehicle; [and] to prohibit a state agency from adopting the California emissions standards for motor vehicles....” House Bill 201 could not be any clearer in its intent to prohibit the adoption of CARB’s regulations by the Ohio General Assembly.

In addition to Ohio, California’s neighbor, Arizona, has adopted legislation barring the state from restricting the use or sale of a vehicle “based on its energy source” and prohibited local governments from implementing such restrictions as well. Other states have also considered a similar ban with varying degrees of success. For instance, in 2023 Wisconsin’s governor vetoed a bill that would have prevented Wisconsin’s localities from banning the use of gas-powered vehicles. With the passage of state laws curbing CARB’s regulatory reach, such as Ohio’s House Bill 201, additional states in opposition to CARB’s regulations may contemplate similar legislative actions.

There are a number of potential impacts for motor carriers and equipment manufacturers resulting from the growing divide between the states. For instance, a fleet manager will need to consider fleet composition on a state-by-state basis and determine when transitions to electric vehicles are required by the various states. Further, manufacturers will need to actively review and stay current with state law in the states where they sell or deliver vehicles for sale. State law on the opposite ends of the emissions regulatory spectrum creates a mixture of rules and regulations that must be carefully navigated by players in the transportation industry to ensure compliance and mitigate penalties.

Benesch is assisting fleets and vehicle producers in navigating this ever-changing landscape while planning for a compliant future, whether in California or other states seeking to follow the path blazed by CARB. Our cross-functional team is available to tackle this operational impact as well as all other day-to-day compliance obligations as emissions regulations emerge.

Jonathan R. Todd is a partner in Benesch’s Transportation & Logistics Practice Group and may be reached at (216) 363-4658 and jtodd@beneschlaw.com.

Robert Pleines, Jr. is an associate in the Transportation & Logistics Practice Group and may be reached at (216) 363-4491 and rpleines@beneschlaw.com.