



Mobility Matters Quarterly

Mobile Source Emissions & Vehicle Safety Update

July 2023

In this issue:

- [NHTSA and FMCSA Issue Notice of Proposed Rulemaking Requiring AEB Systems for Heavy Vehicles](#)
- [EPA Closes Comment Periods on Proposals for Stricter Emissions Standards for Light- and Medium-Duty Vehicles and Heavy-Duty Trucks](#)
- [The Clean Truck Partnership: California and Truck Manufacturers Sign Historic Deal to Adjust California's Transition to Zero-Emission Trucks](#)

NHTSA and FMCSA Issue Notice of Proposed Rulemaking Requiring AEB Systems for Heavy Vehicles

By [Kerem Bilge](#), [Richard M. Couch](#) and [Will Godfrey](#)

On July 6, 2023, the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA) issued a notice of proposed rulemaking to adopt a new Federal Motor Vehicle Safety Standard (FMVSS) requiring automatic emergency braking (AEB) on vehicles weighing more than 10,000 pounds (i.e., heavy vehicles). The proposed rulemaking would also expand FMVSS No. 136's scope requiring nearly all heavy vehicles to have an electronic stability control (ESC) system. NHTSA and FMCSA are seeking comments and suggestions on any aspect of the proposed rule. Comments are due by September 5, 2023.

The proposal responds to the Infrastructure Investment and Jobs Act (Act) which directed the Secretary of Transportation (Secretary) to adopt a new FMVSS requiring commercial motor vehicles subject to FMVSS No. 136 to be equipped with an AEB system. The Act also directed the

Secretary to issue a new FMCSA regulation requiring the use of the AEB system whenever the commercial motor vehicle is in operation.

FMVSS No. 136 currently applies to truck tractors and buses with a gross vehicle weight rating greater than 26,000 pounds, subject to some narrow exceptions, and requires these vehicles to be equipped with ESC systems. The proposed rule expands this application to passenger cars, multipurpose passenger vehicles, trucks and buses weighing more than 10,000 pounds.

In sum, the proposed rule expands the types of heavy vehicles that must be equipped with an ESC system. The proposed rule would also require these heavy vehicles to be equipped with an AEB system. Additionally, the ESC and AEB systems must be used when these heavy vehicles are in operation.

NHTSA conservatively estimates that the proposed rule would prevent an estimated 19,118 crashes, save 155 lives and reduce 8,814 non-fatal injuries annually once all vehicles covered under this rule are equipped with AEB and ESC. NHTSA also estimates installation of AEB and ESC on subject vehicles would eliminate 24,828 property-damage-only crashes annually. Given these estimates, the proposed rule includes specific requirements for AEB systems to meet the safety needs necessary to ensure that AEB systems function at a wide range of speeds and to address the safety problems associated with rear-end crashes, injuries and fatalities.

Specifically, the heavy vehicles subject to the new rule would be required to provide the driver with a forward collision warning at any forward speed greater than 6.2

mph (10km/h). The warning would be required to meet minimum audio and visual standards to alert the driver that a collision is imminent. The heavy vehicles must also have an AEB system that automatically applies the brakes at forward speeds greater than 6.2 mph (10km/h) when a collision is imminent. Finally, the AEB system would be required to prevent the vehicle from colliding with a lead vehicle when tested in accordance with the proposed rule's test procedures.

Such tests are designed to ensure the AEB system is not activated when no collision is actually imminent and to ensure that the driver is alerted if there is an AEB system malfunction. Other tests are designed to analyze the AEB's ability to activate when the forward vehicle stops, moves slowly, or decelerates.

The proposed rule would also require motor carriers who operate commercial motor vehicles to inspect and maintain the AEB and ESC systems.

The proposed rule has a two-tiered phase-in schedule. For vehicles currently subject to FMVSS No. 136, any vehicle manufactured on or after the first September 1 that is three years after the final rule's publication date, must be equipped with an AEB. For vehicles with a GVWR greater than 10,000 pounds but not currently subject to FMVSS No. 136, and any vehicle manufactured on or after the first September 1 that is four years after the final rule's publication date, must be equipped with an AEB and ESC. Small-volume manufacturers, final-stage manufacturers and alterers would be provided an additional year to comply with these requirements.

Importantly, NHTSA and FMCSA determined that the proposed rule would not be applied retroactively – that is, existing heavy vehicles would not need to be retrofitted with AEBs.

The proposed rule was published in the [Federal Register at 88 Fed. Reg. 43,174 \(July 6, 2023\)](#).

EPA Closes Comment Periods on Proposals for Stricter Emissions Standards for Light- and Medium-Duty Vehicles and Heavy-Duty Trucks

By [Joel D. Eagle](#) and [Ashley C. Kirk](#)

The Second Quarter of 2023 was a very busy time for those interested in vehicle emissions standards, with EPA releasing two comprehensive sets of proposed rulemakings. On April 12, 2023, the EPA issued a [press release](#) announcing separate proposals for new emissions standards for light- and medium-duty vehicles and for heavy-duty trucks. EPA described its proposals as “the most ambitious pollution standards ever for cars and trucks.”

The proposed standards for light- and medium-duty vehicles, the “Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles,” would set stringent vehicle emissions standards for criteria pollutants (NMOG, PM, ozone, NOx and CO) and greenhouse gases (GHG) (CO2) that would be phased in for new vehicles of model years (MY) 2027 through 2032. According to EPA, the rule proposal considers the range of currently available technology available to help manufacturers meet the new standards. The proposed rule would also impact the credits available for certain air conditioning technologies, address battery durability and warranty requirements for light-duty and medium-duty plug-in vehicles, and update various program requirements, such as those related to aftermarket fuel conversions, importing vehicles and engines, among many others.

If finalized, the proposed light- and medium-duty standards will help accelerate a transition to electric vehicles. While the proposal does not specify a number or percentage of electric vehicles (EVs) manufacturers must produce, EPA anticipates the proposed standards will encourage using a range of technologies to meet the more stringent emission standards, including higher penetrations of advanced gasoline technologies as well as zero emission vehicles (ZEVs).

Although many light- and medium-duty vehicle manufacturers have already moved forward with ZEV research, development and production, many manufacturers, manufacturers' associations and similar stakeholders commented in response to the proposed rule that EPA is moving too quickly and that the infrastructure

necessary to support the transition to ZEVs does not exist and will not adequately exist in the time needed to support the new ZEVs that would be on the road. These entities suggested that EPA should delay the implementation of the standards to allow time for infrastructure to catch up and to give manufacturers more time to develop compliant vehicle strategies. Others commented that they are already fully committed to transitioning to EVs in the near future and, thus, manufacturing traditional vehicles that will comply with EPA's MY 2027 standards will merely divert resources from such a transition, resulting in a long-term loss to the market and higher emissions overall.

The comment period for the light- and medium-duty vehicle proposed standards closed on July 5, 2023. The proposed rule and links to the docket and comments filed in response to the proposed rule are available [here](#).

The EPA heavy-duty (HD) trucks proposed rule, "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles," represents the third element of EPA's "Clean Trucks Plan," which established EPA's goal to reduce smog, soot, and other air pollution in three rulemakings. The proposals and rules promulgated as part of the Clean Trucks Plan apply widely to commercial vehicles and trucks, including HD vocational vehicles (such as delivery trucks, refuse haulers, public utility trucks, transit, shuttle, school buses, etc.) and tractors (such as day cabs and sleeper cabs on tractor-trailer trucks). This third rulemaking proposes more stringent CO₂ standards for MY 2027 HD vehicles and new CO₂ standards for HD highway vehicles starting in MY 2028 through 2032. The proposed HD rule also included updates to the Averaging, Banking, and Trading credit program for HD vehicles, added durability and warranty requirements for certain electric vehicles, revised several test procedures, and addressed preemption issues related to new locomotives and new engines used in locomotives.

Like the proposed rule for light- and medium-duty vehicles, the HD trucks standards do not require using any specific technology and instead set fleet standards, which EPA predicts will push the use and development of a diverse range of technologies to meet fleet compliance, including ZEVs. Accordingly, as with the proposed light- and medium-duty vehicle standards, various stakeholders commented that the technologies needed to support the long range required for several HD vehicle categories simply do not

currently exist and manufacturers need more time to build those technologies cost-effectively. Further, infrastructure challenges likewise affect this vehicle sector's transition to ZEV technologies.

The comment period for the HD truck proposed standards closed on June 16, 2023. The proposed rule and links to the docket and comments filed in response to the proposed rule are available [here](#).

EPA has been vocal in its desire to finalize both rulemakings before the end of 2023, and we expect EPA to pursue these changes as promptly as possible given the approaching 2024 election cycle. Administrative challenges to the final rules are also possible (even likely), and the potential delays caused by such challenges will also spur EPA's efforts to finalize the rule packages. Thompson Hine will continue to monitor and report on these and all developments related to both rule packages.

The Clean Truck Partnership: California and Truck Manufacturers Sign Historic Deal to Adjust California's Transition to Zero-Emission Trucks

By [Joel D. Eagle](#) and [Tasha N. Miracle](#)

On July 6, 2023, the California Air Resources Board (CARB) and heavy-duty truck manufacturers announced an agreement modifying California's transition to zero-emission vehicles (ZEVs) for the commercial trucking industry and providing compliance flexibilities for such manufacturers, known as the "Clean Truck Partnership."

The Clean Truck Partnership continues to push toward California's goal of 100% clean truck sales by 2036 but also commits to substantially aligning CARB's Heavy-Duty Omnibus (Low NO_x) rule (issued and effective in late 2021) with the U.S. Environmental Protection Agency's (EPA) 2027 nitrogen oxide emissions requirements (EPA's Clean Trucks Plan). It also agrees to raise existing caps on legacy engines and to provide manufacturers at least four (4) years of lead time and at least three (3) years of regulatory stability before imposing new emissions requirements impacting heavy-duty on-highway engines and vehicles, including those to be included in CARB's planned Advanced Clean Trucks 2 rulemaking. CARB further agreed to provide implementation flexibility for automatic recalls during the 2024 to 2034 model year timeframe. In effect, these

provisions create more regulatory certainty and compliance flexibilities for manufacturers while still ambitiously pushing forward California's climate change goals.

The Clean Truck Partnership includes the following timeframes with regard to CARB's obligations:

1. By August 29, 2023, CARB will issue a Notice of Public Comment Period to Consider Proposed Amendments to the Heavy-Duty Engine and Vehicle Omnibus Regulation to amend the existing compliance flexibility provisions and raise legacy caps, as well as streamline other provisions.
2. By September 2, 2023, CARB's Executive Officer will advise the CARB Board of the direction regarding lead time and stability agreements made with manufacturers.
3. By October 3, 2023, CARB's Executive Officer will inform the CARB Board of the remaining requirements in the Clean Truck Partnership.
4. By the first quarter of 2024, CARB will hold a workshop on amendments to the Omnibus regulations.
5. By the third quarter of 2025, CARB will issue a formal rulemaking consistent with the terms of the Clean Truck Partnership.

In return for these regulatory concessions, the manufacturers agreed to comply with CARB's regulations regardless of any challenges to regulations consistent with the Clean Truck Partnership, and will refrain from challenging, participating in, or otherwise supporting challenges to rules issued consistent with the Clean Truck Partnership. Manufacturers similarly agreed to comply with consistent regulations in other states that adopt California's regulations, known as the Section 177 states (i.e., those states that, consistent with Section 177 of the Clean Air Act, choose to adopt California's emissions standards in lieu of federal requirements).

Signatories to the Clean Truck Partnership include:

- Engine Manufacturers Association
- Cummins, Inc.
- Daimler Truck North America
- Ford Motor Company
- General Motors Company

- Hino Motors Limited, Inc.
- Isuzu Technical Center of America, Inc.
- Navistar, Inc.
- PACCAR Inc.
- Stellantis N.V.
- Volvo Group North America

A copy of the Clean Truck Partnership agreement is available [here](#).

Thompson Hine will continue to monitor this significant shift in CARB policy and rulemaking and advise as CARB implements the various components of the agreement.

FOR MORE INFORMATION

For more information, please contact:

Joel D. Eagle

Partner, Environmental and Automotive & Mobility
216.566.5938 | Joel.Eagle@ThompsonHine.com

Tasha Nicole Miracle

Senior Managing Associate, Environmental and Automotive & Mobility
216.566.5622 | Tasha.Miracle@ThompsonHine.com

Kerem Bilge

Managing Associate, International Trade, Transportation and Automotive & Mobility
202.263.4104 | Kerem.Bilge@ThompsonHine.com

Richard M. Couch

Associate, Transportation
202.973.2736 | Richard.Couch@ThompsonHine.com

Ashley C. Kirk

Associate, Environmental
216.566.5585 | Ashley.Kirk@ThompsonHine.com

Will Godfrey*

Director, Mobility, Automation and Safety, Automotive & Mobility, Transportation, Product Liability Litigation and Environmental
202.263.4119 | Will.Godfrey@ThompsonHine.com

**Not licensed to practice law*

This newsletter may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions.

or any member of our [Automotive & Mobility](#) or [Environmental](#) practices.

This newsletter may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions.

© 2023 THOMPSON HINE LLP. ALL RIGHTS RESERVED.