



Mobility Matters Quarterly Mobile Source Emissions & Vehicle Safety Update

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USEPA and CARB Proceed with Proposed Clean Trucks Regulations and Grants

Earlier this year, USEPA proposed newer, stronger standards for heavy-duty vehicles and engines beginning with model year 2027. The proposed standards align with the Biden administration's efforts to focus on promoting cleaner air and reducing pollution from mobile sources and would reduce emissions of smog- and soot-forming nitrogen oxides (NOx) by as much as 60% by 2045. Additionally, the standards set updated greenhouse gas standards with the goal of progressing toward zero-emission heavy-duty vehicles.

This action was the first step in USEPA's Clean Trucks Plan, a series of clean air and climate regulations that USEPA plans to develop over the next three years to reduce pollution from trucks, buses, and other heavy-duty vehicles. Vehicles included in this first phase are school buses, transit buses, commercial delivery trucks, and short-haul tractors. Transportation is the largest source of greenhouse gas emissions in the United States, with heavy-duty vehicles being the second-largest contributor within the

transportation industry. USEPA previously acted to reduce greenhouse gas emissions from heavy-duty trucks with its Phase I and Phase 2 greenhouse gas (GHG) standards. In Phase I, fuel economy standards were issued for heavy-duty trucks manufactured between 2014 and 2018. Phase 2, which began in 2019, extends until 2027 when newer standards are set to take effect.

In addition to the Clean Trucks Plan, the Biden administration plans to fund \$17 million toward electric zero-emission and low-emission school buses across the country through the American Rescue Plan. The target replacement buses will be older diesel buses in underserved communities.

In California, the California Air Resources Board (CARB) announced in March 2022 that the Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP) would be reopened to new voucher requests with nearly \$430 million available. Of the \$430 million, \$196.6 million is standard HVIP funding for California-based businesses and other organizations transitioning their fleets to zero-emission vehicles. HVIP-eligible vehicles include heavy- and medium-duty buses, tractors, straight trucks, school buses, ePTO trucks, step and panel vans, and refuse trucks.

The 2021-2022 funding round remains open for all voucher requests. Although funds specifically set aside for drayage trucks and school buses have been fully subscribed, CARB has stated that requests for these vehicles will continue to be accepted and funded out of standard HVIP funds on a first-come, first-served basis.

USEPA Continues Efforts to Defeat Aftermarket Defeat Devices

Title II of the Clean Air Act (CAA) grants USEPA the authority to set emissions standards for a variety of mobile sources, including heavy- and light-duty vehicles and engines. To control emissions from these sources, manufacturers must install emission controls devices such as filters and catalysts and develop engine calibrations to help manage fuel consumption and optimize performance. These controls are intended to reduce emissions, and CAA sections 203(a)(3)(A)-(B) prohibit any person from tampering with them as well as the sale, manufacture, or installation of “defeat devices” meant to “defeat” these controls and bypass their intended purpose.

Aftermarket defeat devices (such as exhaust-modifying hardware and chip-tuning software) are still sold and installed, frequently for and on diesel trucks and engines. To combat this, USEPA has made eliminating aftermarket defeat devices one of its six National Compliance Initiatives (NCIs) for FY 2020-2023, which are essentially enhanced focus areas and objectives for USEPA in addition to its primary enforcement work. A study conducted by USEPA’s Air Enforcement Division revealed that defeat devices sold for use on certain diesel trucks between 2009 and 2020 were responsible for more than 570,000 tons of excess nitrogen oxides (NOx) and 5,000 tons of excess particulate matter (PM) over the lifetime of the trucks.

Recent CAA violations involving defeat devices include the 2019 Performance Diesel, Inc. settlement where PDI allegedly manufactured, sold, and installed electric tuning software that enabled the reprogramming of an engine to allow the removal of filters, catalysts, and other emissions controls. In another case, Florida car-parts distributor Freedom Performance, LLC agreed to pay \$7 million for its 13,928 alleged violations of the CAA. And in July 2022, Flo~Pro agreed to pay \$1.6 million for allegedly selling over 100,000 devices that USEPA claimed were used to bypass or disable emission controls.

At this time, USEPA is not targeting the individual owners of these vehicles and defeat devices, but rather the parties that advertise, manufacture, and sell them. However, individual owners still must be careful since USEPA has set up a tip line to report those suspected to be

manufacturing, selling, or installing illegal defeat devices in violation of the CAA.

NHTSA Releases Summary Crash Reports for ADAS and ADS Vehicles

In June, the National Highway Traffic Safety Administration (NHTSA) released its initial reports explaining the crash data collected through its [Standing General Order](#) (SGO) issued in June 2021, as amended, concerning [SAE Level 2 Advanced Driver Assistance Systems \(ADAS\)](#) and [SAE Levels 3 through 5 Automated Driving Systems \(ADS\)](#).

NHTSA’s SGO requires that reporting entities (i.e., entities identified on the SGO’s service list) file incident reports not later than one calendar day after receipt of notice for crashes involving ADAS- or ADS-equipped vehicles that occur on U.S. public roads if the ADAS or ADS on the subject vehicle was engaged at any time during the period from 30 seconds immediately prior to the crash, and the crash resulted in any individual being transported to a hospital for medical treatment, a fatality, a vehicle tow-away, or an air bag deployment or involved a vulnerable road user (i.e., any person who is not an occupant of a vehicle with more than three wheels). Further, the SGO requires that reporting entities file incident reports on the 15th calendar day of each month for crashes involving ADS-equipped vehicles that occur on public roads provided the ADS was engaged 30 seconds prior to the crash and the crash resulted in property damage, an injury, or a fatality.

NHTSA’s reports recognize the limitations of the data collected from reporting entities through the SGO. For example, the reports explain that the same crash may be reported multiple times, since the reporting entities may be required to submit multiple reports for the same incident or multiple entities may be required to submit incident reports for the same crash. Similarly, the crash data are not normalized or adjusted by any measure of exposure, including the number of vehicles a manufacturer has manufactured or is operating or vehicle miles traveled. Accordingly, NHTSA said in its [press release](#) that these data “cannot be used to compare the safety of manufacturers against one another.” NHTSA also recognized that the collected data is critical for it to be “able to better identify any emerging risks or trends and learn more about how these technologies are performing in the real world.”

In the ADAS report, NHTSA found that, as of May 15, 2022, 12 reporting entities have submitted incident reports for 392 crashes involving ADAS-equipped vehicles. Of the 392 crash reports, only 98 included crash severity information. Eleven of the 98 crashes involved serious injury or fatality, and no injuries were reported in 46 of the crashes. Of the reported crashes for SAE Level 2 ADAS, at least 116 involved another vehicle and at least four involved a vulnerable road user.

The ADS report shows that, as of May 15, 2022, 25 reporting entities reported 130 crashes involving ADS-equipped vehicles, 108 of which involved no injuries, and only four of which involved serious or moderate injuries. Of the 130 reported crashes, 108 involved collisions with another vehicle and 11 involved a vulnerable road user, such as a pedestrian or cyclist.

NHTSA Letter of Interpretation Harmonizes FAST Act Exception with FMVSS General Exemption Authority

On May 19, the National Highway Traffic Safety Administration (NHTSA) issued a letter of interpretation regarding the application of 49 U.S.C. 30112(b)(10) ("FAST Act Exception"), which permits testing on public roads for testing or evaluation, and 49 U.S.C. 30113 and the implementing regulations codified at 49 C.F.R. Part 555.

49 U.S.C. 30112 states that a person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import vehicles that do not comply with the applicable Federal Motor Vehicle Safety Standards (FMVSS). The FAST Act Exception, established in December 2015 as part of the FAST Act, states that this prohibition does not apply to the "introduction of a motor vehicle in interstate commerce solely for purposes of testing or evaluation by a manufacturer that agrees not to sell or offer for sale the motor vehicle at the conclusion of the testing or evaluation" provided that, among other things, the manufacturer "has manufactured and distributed motor vehicles into the United States that are certified to comply with all applicable [FMVSS]."

49 U.S.C. 30113, on the other hand, allows NHTSA to exempt motor vehicles from any of the FMVSS under certain circumstances, temporarily permitting

manufacturers to produce nonconforming vehicles for sale or other commercial deployment. NHTSA may grant temporary exemptions upon finding that an exemption is consistent with the public interest and four enumerated bases, including that the vehicle offers an overall safety level at least equal to that of a nonexempt vehicle. *See* 49 U.S.C. 30113(b)(3)(B)(iv); 49 C.F.R. 555.6(d).

In an October 8, 2021 request from Thompson Hine, NHTSA was asked to interpret whether a temporary exemption under Part 555 would include vehicles that are identical to Part 55 vehicles and that were tested on public roads under the FAST Act Exception prior to the Part 555 grant.

In its letter of interpretation, NHTSA harmonized the FAST Act Exception with its general exemption authority, explaining that there is a tension between the FAST Act Exception and 49 U.S.C. 30113 because "the former has language limiting the sale of vehicles introduced in interstate commerce for testing or evaluation after completion of such testing or evaluation, while the latter allows manufacturers a means to sell noncomplying vehicles that are at least as safe as non-exempted vehicles." However, NHTSA said, vehicles tested under the FAST Act Exception can be included in a Part 555 temporary exemption population because "Congress did not envision prohibiting manufacturers from selling or deploying vehicles previously tested or evaluated under 30112(b)(10) if those vehicles are identical to vehicles permitted for sale by 30113; if Congress intended such a surprising outcome under 30112(b)(10), it would have made its intentions clear." Accordingly, NHTSA interpreted "the clause 'that agrees not to sell or offer for sale the motor vehicle at the conclusion of the testing or evaluation' as emphasizing Congress's intent not to permit a later sale or offer for sale of the FAST Act vehicle if it is not at least as safe as a compliant vehicle." NHTSA concluded by stating that if "NHTSA determines that vehicles identical to the 30112(b)(10) vehicles are at least as safe as non-exempt vehicles, it is logical that Congress intended that the 30112(b)(10) vehicles be permitted to be sold or deployed under 30113." NHTSA's letter concluded by inviting a rulemaking to remove any ambiguity in connection with its interpretation.

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