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EPA to Ease TSCA Process for Approving New Chemicals Used in EV Batteries

On October 5, 2022, the United States Environmental Protection Agency (EPA) announced plans to streamline the chemical review process under the Toxic Substances Control Act (TSCA) Section 5's "New Chemicals Program" for mixed metal oxides (MMOs) used in new and modified cathode active materials (CAMs). MMOs and CAMs are primary components in electric vehicle (EV) batteries, as well as semiconductors and renewable energy generators such as solar cells and wind-powered turbines. EPA hopes this streamlined effort will allow for the quicker assessment of all potential hazards and exposures of these substances and "supercharge" EV battery production rates.

Under TSCA's New Chemicals Program, all new chemical substances manufactured in (including imported into) the United States must be tested before entering the marketplace to ensure they do not pose a risk to human health or the environment. To comply with this process, manufacturers (including importers) of these new chemical substances must first provide notice to EPA through a

Premanufacture Notice (PMN). Once the PMN is received by EPA, the agency must assess all potential hazards and exposures of the new substance. EPA then decides whether the substance can enter the marketplace or whether steps must be taken to address the risks of the substance.

This is not the first time EPA has streamlined the review process for a particular new chemical substance. In January 2022, EPA announced it was adopting a similar effort for PMNs for biofuels that could be used to displace current, higher greenhouse gas (GHG) emitting fuels. Since this effort was announced, EPA has completed approximately 95% of all biofuel PMNs submitted. EPA hopes a similar effort for MMOs and CAMs will result in an increased production rate of EV batteries, which would benefit the economy and advance the Biden Administration's goals of transitioning to EVs and combating climate change.

As part of this new effort, EPA will launch outreach and training opportunities for those interested in learning about the new streamlined approach, as well as the basics of TSCA statutory and regulatory requirements. Additionally, EPA released an updated [Compliance Advisory](#) reaffirming that new MMOs used as CAMs and modified CAMs are new chemical substances subject to TSCA's New Chemicals Program.

EPA Drops Supplemental GHG Truck Plan, Speeds Up Phase 3 Rule Timeline

On March 28, 2022, EPA published a proposed rule as part of the Clean Trucks Plan that would set new, more stringent standards to reduce emissions from heavy-duty vehicles and engines for model year (MY) 2027-2029. The proposed

rules garnered comments from various industries, with a large majority coming from nonprofit environmental organizations asking for more stringent standards than what EPA proposed. In September, EPA said it planned to consider more stringent GHG standards and would issue a new proposed rulemaking at the end of 2022.

On November 4, 2022, EPA announced that instead of incorporating those comments and issuing a supplemental proposed rulemaking, it would turn its focus to the next phase of the Clean Trucks Plan and move straight to Phase 3 GHG Truck Rules. By dropping the supplemental proposed rulemaking, EPA hopes it can be more ambitious with its GHG standards and get the regulations out “as soon as possible.” EPA nonetheless plans to finalize the originally proposed March 2022 rulemaking for MY 2027-29, which will, at its core, still include more stringent nitrogen oxide (NOx) limits as well as implement changes to 17 of 33 subcategories of vehicles currently in the Phase 2 GHG Truck Rules, which go to MY 2029.

EPA now anticipates the proposed Phase 3 GHG Truck Rules will be issued in March 2023, with a final rule by the end of that year. This is a massive change in the timeline as the Phase 3 GHG Truck Rules were originally anticipated for 2024.

While not much is known yet about the Phase 3 GHG Truck Rules, it is safe to say they will likely begin with MY 2030. Because the supplemental rulemaking is no longer being considered, it is expected that the Phase 3 GHG Truck Rules will also be significantly more stringent than the ones set to be finalized for MY 2027-29. The Phase 3 GHG Truck Rules will also likely account for the new tax credits in the Inflation Reduction Act (IRA), which includes manufacturing incentives and EPA grants for the electrification of heavy-duty vehicles, including a purchase credit of up to \$40,000 for the largest trucks.

California’s Advanced Clean Trucks Requirements to Begin in 2024

In June 2020, California enacted its [Advanced Clean Trucks \(ACT\) regulation](#), mandating an expedited transition to zero-emission trucks beginning in 2024. The regulation requires any manufacturer that certifies on-road vehicles over 8,500 lbs. gross vehicle weight rating for sale in California to transition to zero-emission medium- and

heavy-duty vehicles by 2035. The zero-emission vehicle (ZEV) transition graduates by a certain percentage each year between 2024 and 2035, as depicted below.

Table A-1. ZEV Sales Percentage Schedule

Model Year	Class 2b-3 Group	Class 4-8 Group	Class 7-8 Tractors Group
2024	5%	9%	5%
2025	7%	11%	7%
2026	10%	13%	10%
2027	15%	20%	15%
2028	20%	30%	20%
2029	25%	40%	25%
2030	30%	50%	30%
2031	35%	55%	35%
2032	40%	60%	40%
2033	45%	65%	40%
2034	50%	70%	40%
2035 and beyond	55%	75%	40%

Source: “[Final Regulation Order: Advanced Clean Trucks Regulation](#),” California Air Resources Board

The rule also imposes company and fleet reporting requirements. Large employers, including retailers, manufacturers, brokers, and others are required to report information about shipments and shuttle services. Fleet owners with 50 or more trucks are required to report their existing fleet operations. Additionally, manufacturers were required to report the following information within 90 days of the end of the 2021 model year, and are required to continue reporting the information for each subsequent model year: (1) VIN for each vehicle; (2) vehicle weight class; (3) type of vehicle (tractor, yard tractor, or another type); (4) fuel and drivetrain type; (5) volume produced and delivered for sale in California by vehicle type; and (6) if the vehicle is a near-zero emission vehicle (NZEV), its tested all-electric range.

Recognizing the costs associated with this significant transition, California provides funding programs to support the transition, such as the Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP). It also offers manufacturers the opportunity to generate credits for each ZEV produced and delivered for sale in California.

Since California’s ACT regulation went into effect in 2020, at least five additional states have adopted it (Massachusetts, New Jersey, New York, Oregon, and Washington). These states will likewise require manufacturers to sell zero-emission trucks as an increasing percentage of their annual

sales, beginning a year later than California in 2025. Maine has indicated it may adopt the regulation as well.

Ohio Manufacturers' Association Highlights Ohio's Electric Vehicle Transition

The Ohio Manufacturers' Association (OMA) issued a [report in November 2022](#) highlighting the opportunities and challenges Ohio faces in transitioning to manufacturing electric vehicles (EVs). The report describes a recent joint investment made by Honda and LG Energy Solution to build EV batteries, among other significant EV investments made by manufacturers such as General Motors, Ford, and Cirba Solutions throughout the state.

As the OMA points out, auto-related manufacturing accounted for approximately 17% of Ohio's total manufacturing workforce in 2021, presenting a unique opportunity for manufacturers in Ohio to capitalize on growing EV demand. Moreover, although EVs rely on fewer and different parts than traditional vehicles, EVs require around 41 parts that traditional vehicles do not.

The OMA also points out that such a transition will, of course, entail some environmental impacts. EVs produce no air emissions, unlike traditional vehicles, but according to studies cited by the OMA, manufacturing EVs may be more carbon intensive than traditional vehicles. Yet, this imbalance may be reversed as the EV is driven. EV batteries likewise pose environmental challenges, as a rapid ramp-up in lithium mining may be necessary to meet EV battery demand and may cause further impacts. Moreover, the methods used to charge EVs (e.g., fossil fuels versus renewable resources) can have a significant impact on the carbon savings of the EV.

The OMA report provides further detail on how the EV transition could impact Ohio's economy, its workforce, and U.S. energy security, among other issues, from the perspectives of automakers, suppliers, and policymakers.

FOR MORE INFORMATION

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** Jake is admitted to practice in Illinois and is certified under OH Gov. Bar. R.I § 19 to practice in Ohio while his application for admission is pending.*

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