Mobility Matters Quarterly

Mobile Source Emissions & Vehicle Safety Update

April 2024

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Federal Agencies Adopt NEPA Exclusion to Reduce Red Tape for EV Charging Stations Built with Federal Funds

By Joel D. Eagle and Ashley C. Kirk

In January 2024, EPA adopted the Department of Energy's (DOE) Electric Vehicle Charging Stations Categorical Exclusion under the National Environmental Policy Act (NEPA) to use in program and funding opportunities administered by EPA. NEPA requires federal agencies to assess the environmental impact of development actions, but private actors also must often consider NEPA's application when their development projects involve federal funds or certain types of federal licensing.

While NEPA can be procedurally onerous and require substantial time to complete all mandatory consultation, it permits federal agencies to consider the overall impact of certain types of activities and establish a "categorical exclusion" to eliminate a category of activity from further NEPA review as long as certain environmental factors are not impacted.

EPA's adoption of DOE's categorical exclusion applies to EV charging station projects that EPA undertakes directly or that are financed in whole or in part through federal funding programs, including those administered by the EPA Clean School Bus Program, which provides funding to eligible entities to incentivize and accelerate the replacement of existing school buses with zero- or clean emissions school buses.

DOE's Electric Vehicle Charging Stations Categorical Exclusion is codified in DOE's NEPA procedures as CE B5.23 of 10 CFR part 1021, subpart D, appendix B. Under DOE's categorical exclusion, EPA will consider a variety of factors to determine whether a project involving an electrical charging station is excluded from further NEPA review. These factors include possible disturbance of hazardous substances and impacts to "sensitive resources" such as endangered species, historic properties, wetlands and prime farmland, and other related environmental concerns.

This DOE categorical exclusion was also adopted by the Department of Transportation in September 2023 and applies to any EV charging station project undertaken directly by DOT, to any EV charging action requiring DOT approval, or to any project that is financed in whole or in part through federal funds made available by DOT (including the National Electric Vehicle Infrastructure Formula Program or the Charging and Fueling Infrastructure Discretionary Grant Program).

As EPA and CARB regulations and policies continue to encourage or require the development of EVs, supporting infrastructure, such as EV charging stations, will need to grow to support the expanding fleet of EVs in the marketplace. EPA and DOT's recent adoption of the NEPA categorical exclusion of charging stations will help streamline these projects and should help with the overall goals of EV adoption throughout the United States. Thompson Hine will continue to monitor federal agency actions to support and streamline EV infrastructure.

EPA Finalizes New Emission Limits for Light- and Medium-Duty Vehicles

By Joel D. Eagle and Aren K. Olson

EPA finalized a strict new set of vehicle emissions standards aimed at accelerating the adoption of cleaner vehicle technologies, which the Biden administration has described as the "strongest-ever" in U.S. history, but legislative efforts are under way to prohibit EPA from enforcing the new rule.

EPA's final standards will require manufacturers of light- and medium-duty vehicles (including passenger cars, light trucks, large pickups and vans) to comply with progressively lower emissions limits on greenhouse gases (GHGs), particulate matter and other pollutants, which will phase in gradually between model years 2027 and 2032. The final standards closely resemble the proposed standards EPA issued in May 2023; however, in response to comments received by EPA, the final standards contain slightly relaxed emissions limits and phase in a bit more slowly.

For GHGs, manufacturers of light-duty vehicles will need to cut their fleets' average CO_2 emissions to 85 g/mi by model year 2032, a near 50% reduction from model year 2026 CO_2 levels. Medium-duty vehicle manufacturers will need to reduce their fleets' average CO_2 emissions from 488 to 274 g/mi, an approximate 44% reduction from 2026 levels. For other pollutants, light- and medium-duty vehicle manufacturers will need to comply with new limits for particulate matter (PM2.5), non-methane organic gases (NMOG) and nitrogen oxide (NOx).

To be clear, EPA's final standards are not an EV "mandate," and they won't require companies to start producing electric cars. That said, the practical effect of the new standards is that automakers will rely more and more on cleaner vehicle technologies in the years to come. Manufacturers will likely need to invest heavily in greener technologies, such as hybrid, plug-in hybrid and battery EVs, to meet the new emissions limits. And in line with this, EPA projects that plug-in EVs will account for 68% of new light-duty vehicles by model year 2032.

The final standards are set to take effect 60 days after their publication in the Federal Register. However, a recent Senate vote to prohibit enforcement of the rule did not pass, but 25 state attorneys general filed suit in the U.S Court of Appeals for the D.C. Circuit on April 18 to block implementation of the rule.

Given the significant impact the new rule will have on the automotive industry and the pending legislative and court actions, vehicle manufacturers should carefully monitor these fast-moving developments.

AAM Report Urges U.S. Policymakers to Address Rising Chinese Automobile Imports

By Francesca M.S. Guerrero and Kerem Bilge

On February 20, Alliance for American Manufacturing (AAM), an advocacy group for domestic manufacturers, released a report titled "On a Collision Course – China's Existential Threat to America's Auto Industry and Its Route Through Mexico," which urges U.S. policymakers to take action to limit Chinese auto imports. The report highlights the particular risk posed by imports from Chinese-owned facilities in Mexico.

According to the report, the Chinese auto sector has grown rapidly in the wake of the 2009 financial crisis with the backing of the Chinese government and is currently poised to dominate the global EV market. The report claims that Chinese automakers have benefited from state subsidies, mandatory joint ventures forcing technology transfers from non-Chinese companies, and forced labor. As a result, the Chinese auto sector became the world's leading auto exporter in 2023, selling cars to foreign markets including Europe, Australia, Southeast Asia, and Mexico. According to AAM, the Chinese auto sector is "estimated to have a production overcapacity of millions of vehicles per year" and Chinese automakers are in search of new markets "to soak up the largesse." The report also claims that Chinese firms are heavily investing in foreign markets, including Europe, Mexico, and Thailand, to gain access to nearby markets. According to AAM, Chinese automakers' investments in Mexico in particular are, in effect, "an effort to gain backdoor access to American consumers by circumventing existing policies that are keeping China's autos out of the U.S. market."

The report contains recommendations to U.S. policymakers to address the apparent threat identified by AAM:

- Impose exclusionary tariffs on all Chinese automobile imports to the United States, including both EVs and internal combustion engine vehicles. AAM proposes that this can be achieved either through the existing Section 301 tariffs imposed in 2018 or by launching a new investigation under Section 301 or other U.S. laws.
- Enact the Leveling the Playing Field Act 2.0 to address possible circumvention issues. AAM explains that the legislation would address "country hopping," counter the Belt and Road subsidies granted to third-party countries, and accelerate investigation timelines.
- Reinstate the Section 421 import surge protection safeguard against the Chinese automotive sector and related industries.
- Improve the Department of Commerce's Steel Import Monitoring and Analysis (SIMA) system, which collects and publishes early warning data related to steel mill product imports. AAM suggests that improved visibility into steel products and steel-containing products, such as auto parts, will provide policymakers with early identification of trade flows, allowing for actions to prevent damage to the U.S. economy.
- Fully enforce and tighten USMCA's rules of origin for all automobile content to ensure that its signatories benefit from the agreement in an equitable manner. The report suggests that the U.S. government should insist on transparent and robust application of USMCA's rules of origin, with emphasis on metals, batteries, and other new technologies during the 2026 joint review of USMCA. The report also recommends that the U.S. government adopt similar mechanisms in other trade agreements and in reforms to the GSP program.
- Exclude automobiles and component parts manufactured by companies headquartered in non-market economies from gaining preferential treatment under USMCA, GSP, or any other trade agreement.
- Fully implement and enforce the Uyghur Forced Labor Prevention Act, with additional emphasis on metals, automotive parts, and battery content and raw materials utilized in EVs.
- Strictly enforce the Clean Vehicle Tax Credits authorized under the Inflation Reduction Act to ensure that upstream content and raw materials from China do not benefit.
- Fully enforce domestic content preference policies (including Buy American and Buy America laws) for automobile content and related transit rolling stock (rail and buses).
- Tighten existing laws that block China's state-owned and state-supported companies from accessing taxpayer-funded infrastructure projects by enacting the Airport Infrastructure Vehicle Security Act (H.R. 2912).
- Enact the Invent Here, Make Here Act (S. 1956) to prevent China from accessing taxpayer-funded research and innovations.

AAM's report has already garnered significant attention, including in Congress. We anticipate that some of these measures will move forward, in particular those that do not require passage of new legislation. Similar pressure is rising in Europe, where in October 2023, the European Union opened an anti-subsidy investigation regarding Chinese EVs.

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