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Potential EPA Mobile Source Impacts of Landmark *Loper* Decision

By [Joel D. Eagle](#) and [Aren K. Olson](#)

Earlier this year, the U.S. Supreme Court issued a landmark decision, *Loper Bright Enterprises v. Raimondo*, with the potential to significantly impact the mobility space. In *Loper*, the Court scrapped the decades-old “*Chevron* deference,” which gave agencies broad discretion to interpret the statutes they administer. Following *Loper*, federal courts are no longer required to defer to reasonable agency interpretations of ambiguous statutes; instead, courts must exercise their own “independent judgment” in deciding whether an agency has acted within its statutory authority.

Loper could have far-reaching impacts in a multitude of regulatory areas including environmental mobile source regulation. The U.S. Environmental Protection Agency (EPA) recently issued a number of greenhouse gas emissions restrictions under the Clean Air Act (CAA), and in the wake of *Loper*, several states and interest groups have started to challenge whether that statute actually authorizes the regulations in question.

One example is *Texas v. EPA*, a D.C. Circuit case in which several states are challenging EPA’s tailpipe standards for passenger cars and light-duty trucks, which impose progressively more stringent greenhouse gas limits on manufacturers between model years 2023 and 2026. And while the standards are not an “EV mandate,” they ensure automakers will rely more and more on cleaner vehicle technologies in the years to come. In recent filings, petitioners have asserted that *Loper* significantly strengthens their argument that the standards exceed the bounds of what is permitted under the CAA. As noted in one brief, “*Loper* ... eliminates any possibility of *Chevron* deference, and confirms that EPA’s interpretation gets no special weight.... Nothing in the statute authorizes EPA to effectively mandate electrification using fleetwide [emissions standards].”

In another D.C. Circuit case, *Kentucky v. EPA*, 26 states are challenging EPA’s multi-pollutant standards for light- and medium-duty vehicles. Like the tailpipe limits discussed above, these standards impose progressively more stringent emissions targets on manufacturers and incentivize a switch to greener technologies. In recent submissions, petitioners have cited *Loper* to support their argument that EPA’s regulations exceed the bounds of its CAA authority. Certain amici filings support petitioners’ arguments, urging the court to conclude that the statute “does not authorize the Executive Branch to remake America’s automobile market.”

It is too early to gauge whether these challenges are likely to succeed, at either the Circuit Court level or on any subsequent appeal. However, it is clear that *Loper* will impact the degree of leeway agencies like EPA have to interpret the statutes they administer. And this shift has the

potential to greatly impact federal mobile source environmental regulations in the near term. Challenges to such regulations will likely become more numerous, and their chances of success could increase. Given the uncertainties posed by *Loper*, manufacturers should pay careful attention these legal challenges.

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China's EV Industry Faces a Wave of Trade Restrictions in Major Markets

By [Francesca M.S. Guerrero](#) and [Kerem Bilge](#)

In 2024, major economies, including the United States, Canada, and the European Union, have significantly increased trade restrictions targeting the Chinese electric vehicle (EV) industry, which are intended primarily to protect the domestic markets from the increased volume of EV exports from China.

According to a recent report published by the U.S. International Trade Commission, China exported nearly 1.6 million EV units in 2023, the largest volume of any exporter and an increase of 1,016% from 2018. Lawmakers in major economies are concerned about the overcapacity created in the Chinese EV industry. According to [recent remarks](#) made by Jay Shambaugh, the Under Secretary for International Affairs at the U.S. Department of the Treasury, Chinese supply of EVs and lithium-ion batteries is rising faster than any plausible level of global demand. Over the next few years, China's production capacity for lithium-ion batteries and solar modules is set to reach double or triple the global demand. Similarly, its planned EV production capacity is expected to increase to 70 million vehicles in 2030, greatly exceeding anticipated global EV sales of 44 million.

Recent Actions Taken by Major Economies

The current trajectory of Chinese overcapacity in EV and battery production is raising concern for regulators in major economies and prompting them to take action to protect their domestic markets from the imports.

In September 2024, the Office of the United States Representative [announced](#) that it increased the Section 301 tariffs on Chinese electric and hybrid passenger vehicles, electric buses, lithium-ion batteries, and various critical

minerals used in battery production. Starting on September 27, Section 301 tariffs on electric buses and hybrid and electric passenger vehicles increased from 25% to 100%; tariffs on lithium-ion electric vehicle batteries rose from 7.5% to 25%; and tariffs on various critical minerals, including cobalt, manganese, and ferronickel, increased to 25%. Beginning on January 1, 2026, Section 301 tariffs on natural graphite will increase to 25%.

Further, the U.S. Department of Commerce's Bureau of Industry and Security recently [proposed](#) a ban on the importation and sale of all connected vehicles equipped with certain hardware or software developed, manufactured, or supplied by Chinese entities. If adopted, the proposed rule will likely have a significant impact on automotive supply chains.

On August 26, 2024, the Government of Canada [announced](#) that, effective October 1, 2024, it will implement a 100% surtax on all Chinese-made EVs, in addition to the most favored nation import tariff of 6.1% that currently applies to EVs imported into Canada. It also announced that it will implement a 25% surtax on imports of steel and aluminum from China, effective October 15, 2024.

On July 4, 2024, the European Commission [announced](#), after a nine-month investigation, that it imposed provisional countervailing duties ranging from 17.4% to 37.6% on imports of battery EVs from China. The announcement also noted that consultations between EU and the Chinese government about the investigation are ongoing. Recent [reports](#) suggest that the EU rejected Chinese EV manufacturers' offers to set minimum prices for imports into the EU as a way of avoiding the tariffs.

NHTSA Proposes Pedestrian Head Protection Standard

By [Kerem Bilge](#) and [Will Godfrey](#)

On September 19, 2024, NHTSA published in the Federal Register a proposed Federal Motor Vehicle Safety Standard (FMVSS), FMVSS No. 228, Pedestrian head protection pursuant to a Notice of Proposed Rulemaking (NPRM). The proposed FMVSS is intended to address the risk of serious to fatal child and adult head injuries in pedestrian crashes. Comments on NHTSA's NPRM are due by November 18, 2024.

NHTSA's proposed safety standard would apply to light vehicles, i.e., passenger cars, light trucks (including pickups), multipurpose passenger vehicles (including sport utility vehicles, crossover vehicles and vans) and buses with a GVWR of 4,536 kg. (10,000 lbs.) or less. If adopted, the safety standard would require covered vehicles to meet a head injury criterion when subjected to testing simulating a head-to-hood impact at speeds up to 40 km/h. NHTSA's research shows that most pedestrian injuries and fatalities are caused by the frontal structures of vehicles at speeds less than 40 km/h. According to NHTSA, the location that a pedestrian's head strikes is dependent on various factors, including the pedestrian's size, the vehicle's front configuration, and the speed at impact. But roughly 15% of pedestrian fatalities involve the pedestrian's head contacting the hood top. As such, NHTSA's proposed rule focuses on mitigating the head injuries sustained from contacting the hood and adjacent areas around the hood on the vehicle's front end.

NHTSA's proposal is intended to achieve various regulatory objectives. First, it initiates the process of adopting General Technical Regulation No. 9 into the FMVSSs. Second, it builds upon NHTSA's planned crashworthiness pedestrian protection testing program in the New Car Assessment Program. Third, NHTSA expects that this proposal would work in conjunction with the growth and expansion of automatic emergency braking technologies. The NPRM also aligns with the goals of the Infrastructure Investment and Jobs Act, which requires NHTSA to cooperate with foreign governments and other stakeholders with respect to global harmonization of vehicle regulations.

EPA Faces Legal and Political Challenges to Clean Trucks Standards

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

Since finalizing the third phase of standards under its [Clean Trucks Plan](#) earlier this year, EPA is facing pushback from legislators as well as industry legal challenges. EPA announced its [final Phase 3](#) Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles (HDVs) (Phase 3 Standards) on March 29, 2024, with the rule becoming effective on June 21, 2024. The Phase 3 Standards establish new, more stringent CO₂ emission reduction requirements that phase in over model years 2027 through 2032. The

final Phase 3 Standards apply to heavy-duty vocational vehicles (e.g. delivery trucks and school buses) as well as tractor vehicles such as day cabs and sleeper cabs on tractor-trailer trucks.

Like EPA's emissions standards for Light- and Medium-Duty Vehicles, the HDV Phase 3 Standards are technology-neutral and performance-based. In other words, the standards set emissions reductions, but do not dictate the types of technologies manufacturers must employ to meet those standards.

Also like the EPA's standards for lighter vehicles, the HDV Phase 3 Standards have been challenged by industry opponents. On June 18, 2024, the American Petroleum Institute, American Farm Bureau Federation, National Corn Growers Association, and Owner-Operator Independent Drivers Association filed a [joint petition](#) against EPA, asking the D.C. Circuit Court of Appeals to overturn the Phase 3 Standards. Opponents of the rule claim that EPA is forcing the trucking industry to switch to technology that does not presently exist for HDVs.

EPA is also facing pushback on the new rules from lawmakers. Earlier this summer, a group of over 150 lawmakers issued a [letter to EPA](#), asking it to rescind the final rule. The letter claims that EPA's Phase 3 Standards will "disrupt the heavy-duty truck industry by forcing the broad adoption of heavy-duty zero emission vehicles on an extremely aggressive timeline," and that it would "cost nearly \$1 trillion in infrastructure investment" to electrify the U.S. commercial fleet. These lawmakers also expressed concern with the projected added burden to the farming and agricultural industry that may result from implementation of the HDV Phase 3 Standards and claimed that smaller trucking companies would be forced out of business because they will be unable to afford this "hasty transition to electric or hydrogen powered trucks."

While it is too early to predict what impact this political and judicial pushback may have on the implementation and ultimate outcome of the Phase 3 Standards, we will continue to monitor developments on this critical issue to the HDV industry.

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