

NACAA Policy Background Kit – April 8, 2025

Issue: **Potential action by Congress to disapprove Clean Air Act preemption waivers for California vehicle and engine regulations under the Congressional Review Act**

Purpose: **To inform members about the background and implications of the issue**

Overview:

- In February 2025, EPA submitted to Congress three decisions made during the Biden Administration to grant waivers of Clean Air Act (CAA) preemption: for California’s Advanced Clean Trucks, Advanced Clean Cars II and Heavy-Duty Low-NO_x “Omnibus” rules.
- EPA’s submission of its three waiver decisions as “rules” opens them to potential repeal under the Congressional Review Act (CRA), a law that allows Congress to disapprove regulatory actions.
- The Government Accountability Office and the Senate Parliamentarian have separately looked into the issue and both opined that the waivers are not “rules” subject to the CRA.
- CRA Resolutions of Disapproval against each of the three waivers were introduced in the House on April 2, 2025 and the Senate on April 4, 2025.
- Passage of a resolution of disapproval under the CRA requires only a simple majority vote in both the House and Senate. If the resolutions are approved by both houses, they will be sent to the President for approval or veto. If the resolutions are signed by the President, the California waivers will be retroactively negated and have no legal force or effect.

Significance:

- Disapproval of the waivers by Congress would effectively nullify the three California rules – not only in California, but also in the states that have elected to adopt them pursuant to CAA Section 177.
- Congressional disapproval under the CRA also forbids an agency from taking actions in the future that are “substantially the same.” Thus, disapproval of these three waivers could impact EPA’s ability to grant future CAA waivers of preemption for similar California motor vehicle emission standards.
- The nullification of these three California rules could cause emissions to increase from mobile sources nationally if tailpipe standards are blocked in California and the Section 177 states.

Potential Steps:

- Expressing your agency’s views on this issue, with your area’s specific examples and impacts, with the U.S. House and Senate (contact NACAA staff for contact information).
- Sharing this information with your constituents and other stakeholders.
- Preparing your agency for changes in emission inventories, implementation plans, and other actions if the waivers are revoked under the CRA.

1. Situation Overview

On February 14, 2025, EPA Administrator Lee Zeldin announced that EPA would transmit to Congress decisions by the Biden Administration to grant waivers of Clean Air Act preemption for three California vehicle and fuel regulations: 1) the Advanced Clean Trucks rule, 2) the Advanced Clean Cars II rule, and 3) the Heavy-Duty Low-NO_x “Omnibus” rule.¹ Each of the three waivers was granted by EPA during the Biden Administration – the first on April 6, 2023 and the latter two on January 6, 2025. Administrator Zeldin’s intent in characterizing and transmitting the waiver decisions as “rules” was to offer Congress the opportunity to disapprove them under the Congressional Review Act (CRA).

Enacted in 1996 as part of the Small Business Regulatory Enforcement Fairness Act, the CRA establishes procedures for Congress to review and potentially overturn certain actions of federal agencies. Under the CRA, agencies must report the issuance of rules to both houses of Congress before they take effect, and Congress may overturn a rule using a “joint resolution of disapproval.” A CRA resolution of disapproval can be used to invalidate one federal rule in its entirety within 60 days of continuous session (excluding days either House of Congress is adjourned for more than three days) of the day Congress receives the rule or the rule is published in the *Federal Register*, whichever is later. If both houses of Congress pass the resolution, it is sent to the President for signature or veto. Here, the 60-day clock was triggered on February 20, the day Congress received the waivers.²

EPA did not transmit the California waiver decisions to Congress at the time they were issued because at the time, the agency did not consider them to be “rules” of general applicability, but rather, the result of adjudicatory proceedings particular to California.³ This characterization was in accordance with a 2023 General Accountability Office (GAO) opinion that an earlier California waiver decision was “an adjudicatory order not subject to the CRA,” and even if it were a “rule” under the Administrative Procedure Act (APA), it would still not be subject to the CRA because it would be a rule of “particular applicability” – a type of action that is expressly excluded from the CRA definition of “rule.”⁴ Zeldin stated his position on the issue in his February 14th press release: “The Biden Administration failed to send rules on California’s waivers to Congress, preventing Members of Congress from deciding on extremely consequential actions that have massive impacts and costs across the entire United States.”

On occasion, in situations where an agency did *not* submit an action to Congress at the time of issuance, Members of Congress have asked the GAO to issue a formal opinion as to whether the action satisfies the CRA definition of “rule.” Several Democratic Senators requested on February 19, 2025 that GAO again opine on whether the waiver decisions were “rules.” In

¹ EPA Press Release, “Trump EPA to Transmit California Waivers to Congress in Accordance with Statutory Reporting Requirements” (Feb. 14, 2025), <https://www.epa.gov/newsreleases/trump-epa-transmit-california-waivers-congress-accordance-statutory-reporting>.

² The date of receipt was published in the *Congressional Record*: <https://www.congress.gov/119/crec/2025/02/24/171/36/CREC-2025-02-24-pt1-PgS1310-6.pdf>.

³ Accordingly, EPA’s waiver decisions were published in the *Federal Register* as “Notices of Decision.”

⁴ U.S. GAO, Environmental Protection Agency—Applicability of the Congressional Review Act to Notice of Decision on Clean Air Act Waiver of Preemption, Report No. B-334309 (Nov. 30, 2023), <https://www.gao.gov/products/b-334309>.

response, on March 6, 2025, GAO issued a second formal decision reaffirming its position on this matter. It opined that the analysis and conclusion in its 2023 decision that a CAA preemption waiver notice was not a “rule” for purposes of CRA because it was an “adjudicatory order” under the APA would apply to the Notices of Decision at issue here.⁵

Thereafter, on April 2, 2025, Republican members of the House Committee on Energy and Commerce introduced resolutions of disapproval to nullify each of the three waiver decisions transmitted to Congress. H.J. Res. 87, introduced by Rep. John James (R-MI), would revoke the Advanced Clean Trucks waiver; H.J. Res. 88, introduced by Rep. John Joyce (R-PA), would repeal the waiver for Advanced Clean Cars II; and H.J. Res. 89, introduced by Rep. Jay Obernolte (R-CA), would revoke the waiver for the Heavy-Duty Low-NO_x Omnibus rule.⁶

On April 4, 2025, the Senate Parliamentarian, the official advisor to the Senate on how to best interpret the Senate Standing Rules and Parliamentary Procedure, concluded that the California waivers are *not* subject to the Congressional Review Act, according to a statement issued by Senate Democrats.⁷ Nonetheless, on Friday afternoon April 4th, Sen. Shelley Moore Capito (R-WV), Sen. Deb Fischer (R-NE) and Sen. Markwayne Mullin (R-OK) announced that they have introduced parallel joint resolutions of disapproval against each of the three California waiver decisions in the U.S. Senate.⁸

The Senate and House bills, having been introduced, could be voted on at any time.

2. The Waiver Process Under CAA Section 209

Under Section 209 of the Clean Air Act, California has been allowed since 1967 to adopt emissions standards that are more stringent than those set by EPA, due to its historically unique and significant air quality challenges. EPA’s role in granting a waiver (for onroad regulations) and/or authorization (for offroad regulations) to California on a particular motor vehicle emissions rule is narrow and deferential. EPA is not to substitute its judgment for that of the California Air Resources Board (CARB) as to whether a standard is too technically challenging

⁵ U.S. GAO, Observations Regarding the Environmental Protection Agency’s Submission of Notices of Decision on Clean Air Act Preemption Waivers as Rules Under the Congressional Review Act,” Decision No. B-337179 (Mar. 6, 2025), <https://www.gao.gov/products/b-337179>.

⁶ One day earlier – on April 1, 2025 – Rep. James Comer (R-KY), Chairman of the House Committee on Oversight and Government Reform, and Rep. Brett Guthrie (R-KY), Chairman of the House Committee on Energy and Commerce, sent a letter to GAO announcing that they are reviewing its March 6th decision that the waivers are not “rules.” They assert in the letter that “GAO arguing that Congress cannot use the CRA to repeal the waivers goes well beyond GAO’s advisory role and raises questions about the process, motivations of those involved in the decision, and the institutional understanding of the GAO’s role in the CRA process.” They request that GAO submit documents related to its decision by April 15, 2025, “[i]n order to examine GAO’s commitment to its non-partisan mission.”⁶

⁷ Padilla, Schiff, Whitehouse Welcome Senate Parliamentarian’s Reaffirmation that California’s Clean Air Act Waivers Not Subject to Congressional Review Act (Apr. 4, 2025), <https://www.padilla.senate.gov/newsroom/press-releases/padilla-schiff-whitehouse-welcome-senate-parliamentarians-reaffirmation-that-californias-clean-air-act-waivers-not-subject-to-congressional-review-act/>.

⁸ Capito, Fischer, Mullin Introduce Resolutions to Repeal California’s Radical EV Mandate (April 4, 2025), <https://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=6D3EF090-7774-4827-81C4-65EF65563EA3>.

or too expensive. Moreover, EPA may not base its decision on statutes other than the Clean Air Act, or other policy considerations. Rather, EPA *must* grant California’s request for a waiver and/or authorization unless it can demonstrate that one or more of the conditions of Section 209(b) or Section 209(e)(2) of the Act are not met.⁹

3. California Regulations for Which Waivers of CAA Preemption Were Granted by EPA and Later Submitted to Congress by Administrator Zeldin

a. Advanced Clean Trucks

California’s Advanced Clean Trucks (ACT) regulation, adopted by CARB in 2020, requires that engine manufacturers sell an increasing percentage of zero-emission vehicles (ZEVs) as part of their annual California sales of medium- and heavy-duty trucks from Model Years (MY) 2024 to 2035, with a goal of achieving all-ZEV sales by 2036.

EPA announced its decision to grant in full CARB’s request for a waiver of federal preemption for the ACT rule (and three other rules) under CAA Section 209 on March 31, 2023. The decision was published in the *Federal Register* on April 6, 2023.¹⁰

Additional References:

EPA webpage, “California Waiver Requests for Heavy-Duty Vehicle Emission Regulations,” announcing March 31, 2023 decision to grant the waiver for the ACT rule and two other California rules: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/california-waiver-requests-heavy-duty-vehicle-emission>

CARB “Advanced Clean Trucks Fact Sheet” (August 20, 2021): <https://ww2.arb.ca.gov/resources/fact-sheets/advanced-clean-trucks-fact-sheet?keywords=2025>

b. Advanced Clean Cars II

The Advanced Clean Cars II (ACC II) regulation, adopted in 2022, requires a phased transition to 100-percent ZEV sales by 2035 for passenger cars, trucks, and SUVs. It requires a growing percentage of new-vehicle sales to be ZEVs from MY 2026 to 2035, starting with 35% in MY 2026, increasing to 68% in 2030, and reaching 100% in MY 2035.

EPA granted CARB’s request for a waiver of federal preemption for the ACC II rule under CAA Section 209 on December 18, 2024. The decision was published in the *Federal Register* on January 6, 2025.¹¹

⁹ EPA may deny a waiver in situations where the EPA Administrator determines: 1) California’s determination that its own standards are at least as protective of public health and welfare as the EPA standards is arbitrary and capricious, 2) California does not need its own standard to meet “controlling and extraordinary conditions,” or 3) the California standards and accompanying enforcement procedures are not consistent with Section 209. CAA Sections 209(b)(1) and 209(e)(2), 42 U.S.C. § 7543(b)(1) & 7543(e)(2).

¹⁰ California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero Emission Power Train Certification; Waiver of Preemption; Notice of Decision, 88 Fed. Reg. 20,688 (Apr. 6, 2023).

¹¹ California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision, 90 Fed. Reg. 642 (Jan. 6, 2025).

Additional References:

EPA’s “Vehicle Emissions California Waivers and Authorizations” website, with links to the *Federal Register* Notice of Decision, EPA’s December 17, 2024 Decision Document, and the Supplemental Response to Comments: <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations#ACCP>

CARB website on Advanced Clean Cars II, including discussions of its air quality and environmental justice impacts and its incentives and savings for consumers: <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/advanced-clean-cars-ii>

Clean Air Act § 209(b) Waiver Request Support Document Submitted by CARB (May 22, 2023): <https://www.epa.gov/system/files/documents/2023-12/ca-waiver-carb-req-acc-ii-2023-05-22.pdf>

c. Heavy-Duty Low-NO_x Omnibus

Adopted in 2020, and amended in 2023, the Heavy-Duty Low NO_x Omnibus regulation requires significant NO_x emission reductions from heavy-duty onroad engines, including a 75-percent reduction below existing standards beginning in MY 2024 and a 90-percent reduction by MY 2027. It also updated the heavy-duty in-use testing program to ensure compliance with emission standards over a broader range of vehicle operations; extended useful life and emissions warranty periods; introduced a new low-load certification cycle and corresponding NO_x emission limits; and established an off-cycle emission testing procedure.

EPA granted CARB’s request for a waiver of federal preemption for the Heavy-Duty Low-NO_x Omnibus rule under CAA Section 209 on December 18, 2024. The decision was published in the *Federal Register* on January 6, 2025.¹²

Additional References:

CARB website on Heavy-Duty Low-NO_x Omnibus rule: <https://ww2.arb.ca.gov/our-work/programs/heavy-duty-low-nox/about>

CARB’s Request for Waiver Action Pursuant to Clean Air Act Section 209(b) for California’s “Omnibus” Low NO_x Regulation, as Amended in 2023: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/omnibus2023_carbc_overletter_caa.pdf

Clean Air Act § 209(b) Waiver Request Support Document Submitted by CARB (July 8, 2024): https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/omnibus2023_authreqsupportdoc.pdf

4. Air Quality Implications of Congressional Disapproval of the Waivers

Disapproval of these three waivers of CAA preemption could increase the levels of criteria pollutants, greenhouse gas emissions and other pollutants in the states that have adopted the rules and nationally. As a general matter, disapproval of these and any other California waivers would also remove a long-standing tool that states can use to meet Clean Air Act and state-legislated

¹² *Id.*

compliance obligations. Disapproval would also deny these programs to any states that choose to take their own action on climate change.

Thirteen states and the District of Columbia have adopted one or more of the three regulations at issue under their Clean Air Act Section 177 authority.

Table 1: States Adopting These Programs

Advanced Clean Cars II	Advanced Clean Trucks	Low-NO_x Omnibus
Colorado	Colorado	Colorado
District of Columbia	Maryland	Massachusetts
Delaware	Massachusetts	New Jersey
Maryland	New Jersey	New Mexico
Massachusetts	New Mexico	New York
New Jersey	New York	Oregon
New Mexico	Oregon	Rhode Island
New York	Rhode Island	Vermont
Oregon	Vermont	Washington
Rhode Island	Washington	
Vermont		
Washington		

(Source: CARB website, “States that have Adopted California’s Vehicle Regulations,” <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/states-have-adopted-californias-vehicle-regulations>)

The states that have adopted the California programs have or will incorporate them into state pollution reduction plans. All states will be affected if these waivers are in fact removed because State Implementation Plan (SIP) baselines will be impacted by changes in the national vehicle fleet. Vehicles sold in states that operate programs authorized by CAA Sections 177 and 209 are driven throughout the country. Programs that improve the emissions performance of heavy-duty vehicles have been particularly relevant because of the outsized role interstate routes play in contributing significantly to non-attainment in areas with few stationary sources, such as the urban areas of the West.

California’s programs would have especially significant NO_x and PM benefits for that state: the ACC II program alone was estimated to reduce nearly 70,000 tons of NO_x and nearly 4,500 tons of PM_{2.5} by 2040 in California.¹³ Heavy-duty vehicle and engine programs have even larger emissions benefits in that state. The International Council on Clean Transportation (ICCT) modeled the criteria pollutant benefits of these programs to other states. The table below details criteria pollutant emission reductions accruing to selected states if they adopted the vehicle emissions reduction programs authorized under Sections 209 and 177 of the Clean Air Act.

¹³ Source: CARB’s “Final Statement of Reasons” for ACCII <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/accii/fsor.pdf>

Table 2: Reductions that Could Be Available to State SIPs from These Programs

State	Clean Car Program	Heavy Duty Programs	Clean Car Program	Heavy Duty Programs
	NO _x reduced (tons, 2040)	NO _x reduced (tons, 2040)	PM reduced (tons, 2040)	PM reduced (tons, 2040)
Connecticut		7,320		41
Colorado	17,149	32,600	1,053	213
Delaware	1,060		77	
Massachusetts	7,757	26,950	699	196
Maryland	5,423	36,480	531	233
Maine		10,410		66
New Jersey	8,061	45,220	589	303
New Mexico	6,085		326	
New York	13,817		1,246	
North Carolina		52,780		306
Oregon	8,491	45,910	370	321
Pennsylvania		84,480		479
Rhode Island	1,029	4,740	71	25
Vermont	736	3,010	65	16
Washington	11,187	44,080	582	285

(Sources: ICCT’s “Benefits of Adopting California’s ACCII in 16 States,” <https://theicct.org/publication/benefits-of-state-level-adoption-of-california-acc-ii-regulations/> and “Benefits of adopting California medium- and heavy-duty vehicle regulations under Clean Air Act Section 177,” <https://theicct.org/wp-content/uploads/2022/01/state-level-hdv-emissions-reg-FS-dec21.pdf>)

Losing these reductions will not remove the requirement for states to reduce their emissions to meet Clean Air Act requirements, but could simply shift the reductions required to more expensive pollution controls at stationary sources, if any opportunities even exist in that state. Finally, the greenhouse gas reductions made possible by these California rules are perhaps the most significant measures currently available to states that have set climate targets in their own jurisdictions. It would be challenging to replace these tools for assuring clean air.

5. Additional Resources

a. Background on the CRA

CRA Bill Text (5 U.S.C. §§ 801, 802, and 804):

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5-section802&num=0&edition=prelim>

The Congressional Review Act (CRA): A Brief Overview (Congressional Research Service, Aug. 29, 2024): https://www.congress.gov/crs_external_products/IF/PDF/IF10023/IF10023.11.pdf

Overview of the Congressional Review Act (National Conference of State Legislators): <https://www.ncsl.org/state-federal/congressional-review-act-overview-and-tracking>

b. Past NACAA Comment Letters

NACAA comment letter in support of California’s waiver request for Advanced Clean Trucks and two other rules (August 2, 2022): https://www.4cleanair.org/wp-content/uploads/NACAA_Comments-CA_HD_Waiver_Requests-080222lh.pdf

NACAA comment letter in support of California’s waiver request for the Heavy-Duty Low-NO_x “Omnibus” regulation and two other rules (August 2, 2022): https://www.4cleanair.org/wp-content/uploads/NACAA_Comments-CA_HD_Waiver_Requests-080222lh.pdf

NACAA comment letter in support of California’s waiver request for Advanced Clean Cars II (February 27, 2024): https://www.4cleanair.org/wp-content/uploads/NACAA_Comments_to_EPA-CARB_ACCII_Waiver_Req-022724-lh.pdf

c. Past Comment Letters of Other Organizations

Comments of ALA and other national, state and local health and medical organizations in support of California waiver requests for Advanced Clean Trucks, Heavy-Duty Low-NO_x Omnibus and other rules (August 1, 2022): <https://www.lung.org/getmedia/8f21d000-4a9f-4f0b-b759-a2a6ccdbe02f/Health-Org-Comments-CA-Clean-Trucks-Waivers-8-1-22.pdf>

Comments of ALA and other health and medical organizations in support of California waiver requests for Advanced Clean Cars II, Heavy-Duty Low-NO_x Omnibus, and other rules (October 31, 2023): <https://www.lung.org/getmedia/21a0fa99-3d78-424e-909e-3184c20aca3a/National-and-state-health-org-ACC-II-waiver-comments-2-27.pdf>

Comments of ALA and other health, medical and nursing organizations in support of California Advanced Clean Cars II Waiver (February 27, 2024): <https://www.lung.org/getmedia/21a0fa99-3d78-424e-909e-3184c20aca3a/National-and-state-health-org-ACC-II-waiver-comments-2-27.pdf>