

California & the Waiver: The facts

The law, the facts and the hollow legal arguments behind the Trump Administration's latest attack on California

Legal requirements for a waiver under the Clean Air Act

The U.S. EPA has granted California waivers for its clean air and climate program for decades based on its long-standing determination that:

1. California's standards are **at least as protective as federal standards**, and that **the state's determination of that fact was not arbitrary and capricious**;
2. California's standards are needed to meet **compelling and extraordinary conditions**.
3. California's standards are not inconsistent with certain Clean Air Act provisions related to **technical feasibility and lead time to manufacturers**.

We highlight some the many ways California's program has long addressed these requirements while protecting Californians.

Waiver facts

- After California obtains a waiver for specified emission standards, Clean Air Act [Section 177](#) allows other states that are or have been noncompliant with federal ambient air quality standards to adopt California's standards as their own. To date, [thirteen states](#) and the District of Columbia have adopted all or part of California's regulations under Clean Air Act Section 177.
- **No waiver has ever been revoked and the one previous denial was quickly reversed.** There is no Clean Air Act process for revoking a waiver – which makes sense because governments and industry rely on waivers for years after they are granted to deliver clean vehicles and develop clean air plans. Even waiver denial is incredibly rare. The one time this occurred, in 2008, the U.S. EPA initially denied California's waiver for GHG emission standards for 2009 and later model year light-duty motor vehicles. That denial was reversed when the U.S. EPA reconsidered it, and ultimately granted it.
- Waivers do not expire; they are sometimes superseded by a new waiver approving more stringent standards.

Compelling & extraordinary conditions

- **Compelling need:** California has demonstrated the necessity for stricter-than-federal standards based on a compelling need to do so. This is still the case. California has a serious smog problem, exacerbated by climate change, and still needs stricter-than-federal standards to address it and many other climate and air quality issues. In fact, air quality in many parts of the state faces major threats as climate change worsens, leading to more smog, more wildfires, and increased risk. Climate change itself poses a severe threat to Californians.
- **Air pollution in California today:** Although California standards have dramatically improved air quality, California's unique geography means air quality goals still require continued progress on vehicle emissions. Seven of the ten cities with the worst air pollution nationwide are in California. Ten million Californians in the San Joaquin Valley and Los Angeles air basins currently live under what is known as "severe non-attainment" conditions for ozone. People in these areas suffer unusually high rates of asthma and cardiopulmonary disease. Zero-emission vehicles are a critical part of the plan to protect Californians.
- **Climate change:** Climate change makes air quality worse and poses many other threats to Californians: It is already increasing the number of hot days that can result in smog events, impacting precipitation and snowpack, and exacerbating wildfires. California's geography – with its population in deep valleys, along the rising sea, and in fire-prone forests, makes the state especially climate-vulnerable. In the future, sea level rise will imperil the coast, and hotter temperatures statewide will lead to higher levels of pollution in our cities.

Feasibility & lead time

California has always demonstrated that its standards are feasible, and that auto manufacturers have enough lead time to develop the technology to meet them. It has done so for every waiver it has submitted. The GHG and ZEV standards even underwent a mid-term review that confirmed that the industry was on track.

The federal claims regarding California's waiver are bogus

The federal government is abandoning years of precedent and facts to attempt to revoke the waiver, but these claims make no sense.

1. California's authority comes directly from the Clean Air Act and Congress has regularly re-affirmed its authority because California standards have helped protect the public

and drive innovation for decades. This system works, and there is no “off switch”. The Clean Air Act does not allow waivers to be revoked.

2. An enormous scientific and factual record shows California’s program remains effective, appropriate, and needed. We need more progress on every front to deliver on climate and clean air goals.
3. As the Supreme Court has recognized, Congress wrote the Clean Air Act to ensure the U.S. EPA could protect the public from air pollution, including pollution like greenhouse gases from automobiles that we later realized threaten public health and welfare. [See: *Massachusetts v. EPA*, 549 U.S. 497 (2007).]
4. As numerous federal courts have recognized, Congress intended to preserve states’ primary authority to protect the public health and welfare, respect California’s judgment, and allow California to serve as a laboratory of innovation to enable the nation to benefit from the advanced technology developed to meet California’s standards. [See, e.g., Clean Air Act, section 101; *Motor & Equip. Mfrs. Ass’n, Inc. v. EPA*, 627 F.2d 1095 (D.C. Cir. 1979).]
5. It is also important to note that when it amended the Clean Air Act in 1977, Congress also expressly **retained and strengthened** California’s inherent authority, recognizing its value as a laboratory to help innovate ways to reduce motor vehicle pollution. [Clean Air Act, Section 209.] With the 1990 Clean Air Act Amendments, Congress even further expanded the scope of the California waiver to cover off-road or non-road engines.

EPCA specifically directs NHTSA to consider emission standards

The federal government also makes the bizarre argument that a federal fuel economy statute (EPCA) somehow blocks California’s program – even though that program has been operating alongside California’s for decades with no problems. Again, neither the facts nor the law provides NHTSA with the authority to unilaterally void California’s authority under the Clean Air Act.

1. Congress did not secretly revoke California’s authority through meaning hidden in the Energy Policy and Conservation Act. On the contrary, Congress **directed** NHTSA to consider emission standards, including California’s waiver standards, when setting the “maximum feasible” fuel economy standards – and understood that NHTSA and U.S. EPA would fulfill their respective obligations. (That is exactly what the Obama administration did by recognizing the separate authorities of the separate agencies and harmonizing them into a single nationwide standard.)

2. Furthermore, as two federal district courts have explicitly pointed out, Congress also wrote EPCA recognizing California would **continue exercising its authority to set governmental emission standards**. [See *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F.Supp.2d 295 (D. Vt. 2007); *Cent. Valley Chrysler-Jeep, Inc. v. Goldstene*, 529 F.Supp.2d 1151 (E.D. Cal. 2007).]

Using EPCA to attack California's authority is an old, tired legal argument that has been soundly rejected by Congress and the courts, and which the U.S. EPA itself has rejected. (See 74 Fed. Reg. 32,744, July 8, 2009.) Even so, the Trump administration is determined to exhume it from its legal grave, and it's reviving this flawed legal argument in a desperate effort to hurt California.

We feel confident that the Trump administration's unfortunate effort to once again drag the untenable EPCA argument back to court for a third time is a losing proposition, especially considering the precedents now in place. It will also lead to continued uncertainty for those automakers who have not yet chosen to sign on to the framework agreements with California.

The SAFE Rule: U.S. EPA myths vs. California facts

Myth #1: Cutting standards will reduce vehicle prices.

Fact: Bogus. The agency's own analyses show that you can get to 2025 stringency mostly with cost-effective gas car improvements (not electric cars, mostly), and electric car prices are steeply falling anyway. Moreover, auto prices are rising with or without improving the cars – so the Trump folks want us to buy **worse cars** but still **at high prices**. Cars cost money to run; making cars cleaner also makes them sturdier and cheaper to drive, a consumer benefit.

Myth #2: The SAFE rule could save hundreds of lives annually.

Fact: Utterly bogus. We don't need to make cars worse to make them safer – we just need to make them safer. The U.S. EPA's own experts are clear that their arguments here are wrong. NHTSA has broad authority to issue safety rules that could actually matter – and should. They should do their job rather than endangering public health by attacking air pollution rules.

Myth #3: Global temperature: The SAFE rule makes minimal changes to a rule that would not have made appreciable difference globally anyway.

Fact: The U.S. EPA has no real plan to cut emissions – and this action makes it worse. Emissions from the auto sector are bigger than emissions from entire countries, and we're going to need deep cuts. Slowing progress here makes it hard to get where we need to go – and the U.S. EPA admits that, by saying it expects unlivable temperatures and levels of

carbon dioxide by the end of the century. This is cynicism and fatalism at its worst; the U.S. EPA should do its job.

Myth #4: Companies trade credits for compliance.

Fact: Yes, auto companies trade credits to comply – but those credits are real and generated by **real improvements**. A flexible market system is a good thing and it will keep working to keep auto manufacturers in compliance – and generate environmental benefits and cleaner air.

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