

February 27, 2024

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention: Docket No. EPA–HQ–OAR–2023–0292

Re: *California State Motor Vehicle Pollution Control Standards; Advanced Clean Cars II Regulations; Request for Waiver of Preemption*

Dear Administrator Regan:

The Northeast States for Coordinated Air Use Management (NESCAUM) is writing to express strong support for the California Air Resources Board’s (CARB’s) request for the U.S. Environmental Protection Agency (EPA) to approve a waiver of preemption under section 209(b) of the Clean Air Act for California’s Advanced Clean Cars II (ACC II) regulations.¹ Beginning with model year 2026, the ACC II regulations will reduce evaporative and exhaust emissions from new vehicles with internal combustion engines, while driving the sales of new cars and light-duty trucks to 100-percent zero-emission vehicles (ZEVs) by the 2035 model year.

NESCAUM is the regional nonprofit association of state air quality agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. NESCAUM serves as a technical and policy advisor to its members and works with broader groups of states to develop strategies to achieve their shared air quality and climate goals. For more than three decades, NESCAUM has supported states in using the authority under Section 177 of the Clean Air Act to adopt California’s motor vehicle emission standards. Currently, NESCAUM hosts a workgroup for Section 177 states across the country to assist with and coordinate state adoption and implementation of California’s clean car and truck standards. NESCAUM also facilitates the Multi-State ZEV Task Force, which serves as a unique forum for galvanizing state leadership on complementary programs and policies through research and analysis, information sharing, collective strategizing, and coordinated action on shared priorities.

CARB’s Waiver Request Satisfies the Statutory Criteria

In recognition of California’s longstanding and pioneering automobile emissions program, California is the only state authorized by the Clean Air Act to establish its own emissions standards for new motor vehicles, subject to approval of a preemption waiver by EPA.² Section 209(b) of the Act requires EPA to grant California’s request for a waiver unless EPA finds: (1) California’s determination that the standards are “at least as protective of public health and welfare as applicable Federal standards” is arbitrary and capricious; (2) California does not need

¹ 88 Fed. Reg. 88908 (Dec. 26, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-12-26/pdf/2023-28301.pdf>.

² CAA § 209(a)-(b), 42 U.S.C. § 7543(a)-(b).

the standards to meet “compelling and extraordinary conditions;” or (3) California’s standards are not consistent with Section 202(a) of the Clean Air Act.³

The statutory language and legislative history of Section 209(b) “indicate that California’s regulations, and California’s determination that they comply with the statute, when presented to the [EPA] Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them.”⁴ In considering waiver requests, the D.C. Circuit has explained that EPA “is not to overturn California’s judgment lightly,” that California must have “the broadest possible discretion in selecting the best means to protect the health of its citizens,” and that the state may “blaze its own trail with a minimum of federal oversight.”⁵

On May 22, 2023, CARB submitted a request to EPA to grant a waiver of preemption for its ACC II regulations. CARB’s request included a detailed analysis that clearly and unequivocally demonstrates that the ACC II regulations meet the statutory criteria to obtain a waiver. NESCAUM concurs with CARB’s analysis and conclusion that EPA has no basis on which to deny the waiver request for the ACC II regulations. Rather than reiterate points already made by CARB, the remainder of NESCAUM’s comments focus on why a waiver is important to other states that have adopted California’s ACC II regulations.

Section 177 States Depend on California’s ACC II Regulations

Section 177 of the Clean Air Act authorizes other states to adopt standards that are identical to California’s motor vehicle emissions standards in lieu of federal standards.⁶ To date, twelve states and the District of Columbia have exercised their right to adopt the ACC II regulations,⁷ and additional states are planning to adopt this year. Section 177 states are counting on the emission reductions expected from the ACC II regulations to meet air quality standards, improve public health, especially in overburdened communities near high-traffic areas, and help achieve state greenhouse gas (GHG) reduction commitments. However, under the Clean Air Act, California’s emissions standards are not enforceable in California or the Section 177 states until EPA grants a waiver of preemption.

The ACC II regulations will significantly decrease emissions of criteria air pollutants, including smog-forming oxides of nitrogen and fine particulate matter, in the Section 177 and nearby states. Harmful levels of these pollutants exacerbate asthma and other cardio-respiratory illnesses, especially in children and older adults, leading to additional doctor and emergency room visits, missed days of school and work, and increased risk of premature death. Many Section 177 states, as well as other states in the NESCAUM region, suffer from persistent non-attainment with National Ambient Air Quality Standards for ozone. ACC II’s requirements to transition to ZEVs, while decreasing emissions from internal combustion engine vehicles, will help Section 177 states achieve and maintain attainment with National Ambient Air Quality

³ CAA § 209(b), 42 U.S.C. § 7543(b).

⁴ *Motor & Equip. Mfrs. Ass’n v. EPA*, 627 F.2d 1095, 1121 (D.C. Cir. 1979) (EPA may not disregard California’s determination absent “clear and compelling evidence” to the contrary).

⁵ *Motor & Equip. Mfrs. Ass’n v. Nichols*, 142 F.2d 449, 463 (D.C. Cir. 1998) (citations omitted).

⁶ CAA § 177, 42 U.S.C. § 7507.

⁷ These states include Colorado, Delaware, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington.


Standards for ozone. This transition is also vital to providing improved public health outcomes, especially in communities located near heavily traveled transportation corridors.

The Section 177 states are also relying on the ACC II regulations to provide much needed reductions in GHG emission from light-duty vehicles. The transportation sector is the largest source of GHG emissions in the United States, with cars and light-duty trucks responsible for the majority of these emissions. A rapid and equitable transition to ZEVs is urgently needed to reduce GHG emissions and mitigate the impacts of the Earth's rapidly changing climate, including more frequent and intense precipitation and wind events, flooding, heat waves, drought, wildfires, retreating snow and ice pack, ocean warming and acidification, accelerating sea level rise, and large-scale biodiversity loss. Like California, the Section 177 states have established GHG reduction requirements or targets for 2050 and interim targets that require aggressive emissions reductions by as soon as 2030. The ACC II regulations are a critical component of state plans and strategies to reduce GHGs to mitigate the worst effects of climate change.

A waiver will make the ACC II regulations enforceable by adopting states and will also provide regulatory certainty that drives utility and private investment in zero-emission technologies and infrastructure. Thus, granting CARB's waiver request without delay will advance state efforts – both in California and the Section 177 states – to require cleaner conventional automobiles and accelerate the transition to ZEVs in order to comply with air quality standards, protect communities from localized air pollution, and meet climate commitments.

In conclusion, for the reasons stated above, NESCAUM urges EPA to expeditiously approve CARB's waiver request for the ACC II regulations.

Sincerely,



Paul J. Miller
Executive Director

Cc: NESCAUM Directors
Liane Randolph, Steven Cliff, CARB
Alejandra Núñez, EPA Office of Air and Radiation (OAR)
Sarah Dunham, EPA OAR, Office of Transportation and Air Quality (OTAQ)
William Charmley, EPA OAR OTAQ, Assessment and Standards Division
David Dickinson, EPA TCD
Lynne Hamjian, Cynthia Greene, EPA Region 1
Richard Ruvo, Kirk Wieber, Matthew Laurita, EPA Region 2