



**ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OAR-2023-0292; FRL-11010-02-OAR]**

**California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of decision.

**SUMMARY:** The Environmental Protection Agency (“EPA”) is providing notice of its decision granting the California Air Resources Board’s (“CARB’s”) request for a waiver of Clean Air Act preemption for its Advanced Clean Cars II (“ACC II”) regulations. EPA’s decision was issued under the authority of the Clean Air Act (“CAA” or “Act”) section 209.

**DATES:** Petitions for review must be filed by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID EPA-HQ-OAR-2023-0292. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center’s hours of operation are 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, except Federal holidays. The electronic mail (email) address for the EPA Docket Center is: [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov). An electronic version of the public docket is available through the Federal government’s electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov>. After opening the [www.regulations.gov](http://www.regulations.gov) website, enter EPA-HQ-OAR-2023-0292 in the “Enter Keyword or ID” fill-in box to view documents in the record. Although a part of the official docket, the public docket does not

include Confidential Business Information (“CBI”) or other information whose disclosure is restricted by statute.

EPA’s Office of Transportation and Air Quality (“OTAQ”) maintains a web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in this notice; the page can be accessed at: <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>.

**FOR FURTHER INFORMATION CONTACT:** Michael Olechiw, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. Telephone: 734-214-4297. Email: [California-Waivers-and-Authorizations@epa.gov](mailto:California-Waivers-and-Authorizations@epa.gov) .

**SUPPLEMENTARY INFORMATION:** On December 26, 2023, EPA published a **Federal Register** notice announcing its receipt of CARB’s waiver request. In that notice, EPA invited public comment on California’s waiver request and an opportunity to present testimony at a public hearing.<sup>1</sup> EPA held a public hearing on January 10, 2024, and the written comment period closed on February 27, 2024.<sup>2</sup> EPA has considered all comments submitted to the public docket on this matter.

On December 17, 2024, I signed a Decision Document granting California a waiver of preemption pursuant to section 209(b) of the CAA, as amended, 42 U.S.C. 7543(b), for regulations applicable to new 2026 and subsequent model year (MY) California on-road light- and medium-duty vehicles, hereafter the Advanced Clean Cars II (“ACC II”) regulations.<sup>3</sup> The ACC II program includes a series of requirements regarding California’s low emission vehicle (“LEV”) IV regulation and a series of requirements regarding its zero-emission vehicle (“ZEV”)

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<sup>1</sup> 88 FR 88908 (December 26, 2023).

<sup>2</sup> A transcript of the public hearing is located at EPA-HQ-OAR-2023-0292-0056 and all written comments are also located at [regulations.gov](https://www.regulations.gov) at EPA-HQ-OAR-2023-0292.

<sup>3</sup> EPA’s Decision Document can be found at EPA-HQ-OAR-2023-0292. In addition to the Decision Document, EPA prepared a Supplemental Response to Comments document that is also part of the Administrator’s waiver decision. The Supplemental Response to Comments document can also be found at EPA-HQ-OAR-2023-0292.

program.<sup>4</sup> The LEV IV requirements include, for example, applying exhaust and evaporative emission fleet-average standards solely to vehicles powered by internal combustion engines and excluding ZEVs from the fleet calculation. The LEV IV requirements reduce the maximum allowed exhaust and evaporative emission rates from vehicles under the existing fleet-average standard and aim to reduce cold-start emissions by applying the emissions standards to a broader range of in-use driving conditions. The ZEV requirements of ACC II include, for example, a requirement for vehicle manufacturers to sell increasing percentages of ZEVs beginning with the 2026 MY. Manufacturers can meet up to 20 percent of their sales requirements using plug-in hybrid vehicles (PHEVs) that meet specified requirements. A comprehensive description of California's ACC II program can be found in the Decision Document for this waiver and in materials submitted to the Docket by CARB.

Section 209(b) of the Act provides that the Administrator, after notice and opportunity for public hearing, shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures unless certain criteria are met. The criteria for denying such a waiver include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California does not need such State standards to meet compelling and extraordinary conditions; and whether such State standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.

CARB determined that these standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective to public health and welfare than the applicable Federal standards. The administrative record, including information presented

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<sup>4</sup> EPA's waiver decision includes the entire ACC II regulatory text that can be found in Attachment 7 to CARB's May 22, 2023, ACC II waiver request (the ACC II Waiver Support Document) found at EPA-HQ-OAR-2023-0292-0034. (CARB's entire waiver submission to EPA is found at EPA-HQ-OAR-2023-0292). The specific regulatory provisions under EPA's waiver consideration can be found at footnote 36 to the ACC II Waiver Support Document.

to me by parties opposing California's waiver, did not demonstrate that California arbitrarily or capriciously reached this protectiveness determination. Therefore, based on the record, I cannot find California's determination to be arbitrary and capricious under section 209(b)(1)(A).

CARB has demonstrated the existence of compelling and extraordinary conditions justifying the need for such State standards. The administrative record, including information presented to me by parties opposing California's waiver request, did not demonstrate that California does not need such State standards to meet compelling and extraordinary conditions. Thus, based on the record, I cannot deny the waiver based on section 209(b)(1)(B).

CARB has submitted information that its emission standards and test procedures are technologically feasible, present no inconsistency with Federal requirements, and are consistent with section 202(a) of the Act. The administrative record, including information presented to me by parties opposing California's waiver request, did not satisfy the burden of persuading EPA that the standards are not consistent with section 202(a). Thus, based on the record, I cannot deny the waiver based on section 209(b)(1)(C).

Accordingly, I hereby granted the waiver requested by California.

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. Petitions for review must be filed by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

**Michael S. Regan,**

*Administrator.*

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