



# FACT SHEET



## PROPOSED CALIFORNIA WAIVER WITHDRAWAL

### **What is the proposed action on the California Waiver?**

- The Clean Air Act (CAA) generally preempts State regulation of motor vehicles.
- California is specially empowered to apply for a waiver from this preemption, and EPA grants it unless certain blocking conditions are triggered.
- EPA is proposing to withdraw the January 9, 2013, waiver of CAA preemption for California's Advanced Clean Car (ACC) program, Zero Emissions Vehicle (ZEV) mandate, and Greenhouse Gas (GHG) standards that are applicable to model years 2021 through 2025.

### **What is the proposed legal basis for withdrawing the California Waiver?**

- Under CAA section 209(b)(1)(B) (compelling and extraordinary conditions), EPA proposes to find that California does not need its GHG and ZEV standards to meet compelling and extraordinary conditions because those standards address environmental problems:
  - that are not particular or unique to California;
  - that are not caused by emissions or other factors particular or unique to California; and
  - for which the standards will not provide any remedy particular or unique to California.
- Under CAA section 209(b)(1)(C) (consistency with section 202(a)), EPA proposes to find that California's GHG and ZEV standards are inconsistent with section 202(a) because they are technologically infeasible in that they provide insufficient lead time to permit the development of necessary technology, giving appropriate consideration to compliance costs.
- Furthermore, NHTSA has proposed to find that California's GHG and ZEV standards are preempted under EPCA. EPA is soliciting public comment as to whether, if NHTSA finalizes EPCA preemption, that would provide a separate basis to withdraw the waiver separate and apart from the analysis described below.



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## What is the statutory basis for State preemption of new motor vehicle emission standards and the criteria to grant or deny a waiver?

- Section 209(a) of the CAA provides that: “No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.”
- However, Title II affords special treatment to California: subject to certain conditions, it may obtain from EPA a waiver of section 209(a) preemption.
- Specifically, section 209(b)(1) of the CAA requires the Administrator, after an opportunity for public hearing, to waive application of the prohibitions of section 209(a) to California, if California determines that its State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.
- Under section 209(b)(1) of the CAA, California’s ability to obtain a waiver is not unlimited. The statute provides that “no such waiver will be granted” if the Administrator finds *any* of the following:
  - (A) [California’s] determination [that its standards in the aggregate will be at least as protective] is arbitrary and capricious,
  - (B) [California] does not need such State standards to meet compelling and extraordinary conditions, *or*
  - (C) such State standards and accompanying enforcement procedures are not consistent with section [202(a)].