

Calif. Emission Authority Revival Is Tailwind For Stricter Rules

By **Rick Rothman** and **Jeremy Esterkin** (March 22, 2022, 11:52 AM EDT)

In a move that was telegraphed at the outset of the Biden administration, the U.S. Environmental Protection Agency announced March 9 that it is reversing a Trump-era decision to revoke California's authority to set tailpipe emission standards more stringent than those established by the agency.

This action restores California's role in setting more stringent emission and fuel efficiency standards that have impacts beyond the state's borders.

Background

In the 1960s, California sought and received a waiver under the federal Clean Air Act, commonly known as the California waiver, that allows the state to set its own tailpipe emissions standards for new motor vehicles.

The waiver was granted in part to address the state's unique air pollution problems, based on the determination of the EPA that:

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

The California waiver effectively established the state as the driver of vehicle emission standards nationally because automakers were reluctant to produce a separate class of vehicles that met the state's more stringent requirements.

Rather than abandon the enormous auto market in California — and in other states that eventually adopted the standards pursuant to the California waiver — automakers have instead produced vehicles for the entire U.S. market that comply with California's stricter standards.

In September 2019, as part of its broader effort to scale back greenhouse gas regulations, the Trump



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administration revoked the California waiver, citing both safety and economic reasons.

This provoked significant backlash from California, environmental groups and even most auto manufacturers — many of which subsequently made voluntary commitments regardless of the rollback.

California and other states challenged the administration's action, arguing not only that the U.S. Congress intended for California to design and implement its own emission-control program so that it could address extraordinary climate conditions, but also that the EPA lacked authority under the Clean Air Act to rescind the waiver.

The litigation did not proceed, however, in light of Executive Order No. 13990 on public health and environmental protections, issued by President Joe Biden on the first day of his presidency that, among other things, directed the EPA and the National Highway Traffic Safety Administration to reconsider the prior administration's rescission of the California waiver.

Reinstating the California Waiver

In April 2021, the Biden administration directed federal agencies to take steps to reverse the former administration's revocation decision and once again allow California to set its own tailpipe emission standards.

This past December, NHTSA moved to reinstate the California waiver, declaring that the 2019 revocation will "no longer form an improper barrier to States exploring creative solutions to address their local communities' environmental and public health challenges."

With the March 9 announcement, the EPA has followed suit in restoring the waiver.

With the waiver reinstated, California is expected to push forward its ambitious goals in cutting greenhouse gas emissions from vehicular sources, which constitute a substantial portion of total U.S. emissions.

The move will allow the state to set aggressive emissions and efficiency standards, as well as implement policies outlined in California's Executive Order No. N-79-20, issued in September 2020, directing state agencies to include enhanced zero-emission vehicle standards for the next round of tailpipe emission standards — applicable to model years between 2026 and 2035 — and to possibly require that 100% of new passenger car and truck sales be zero-emission vehicles by 2035.

Further, California's Advanced Clean Trucks rule, which would require a select number of new medium and heavy-duty trucks to be zero-emissions vehicles by 2025, may also gain traction on a national level.

Looking Ahead

While the Biden administration has ambitious goals to reduce greenhouse gas emissions in the coming decades, the prospects for bold, omnibus climate change legislation at the federal level have waned over the past year.

Against that backdrop, the reinstatement of the California waiver represents a significant victory for advocates seeking greater regulation of greenhouse gases and other emissions.

By some estimates, the Trump administration's waiver revocation had a greater impact on greenhouse gas emissions than any of its other actions, with the potential to have increased CO₂e emissions in the U.S. by at least 453 million metric tons by 2035.[1]

California has both the means and the motivation to enact more aggressive emission-reduction measures for mobile sources, which may be what the Biden administration is counting on to make further progress on at least some of its climate goals.

From a practical perspective, Biden's reinstatement of the waiver is not likely to portend a major shift in automakers' current behavior. Most automakers have expected this move since the 2020 election.

Moreover, automakers were generally reluctant to revamp long-term planning with respect to model years that are further out, as evidenced by the number of companies that joined the voluntary compact with California after the waiver was rescinded.

At most, the reinstatement of the waiver may accelerate existing trends and perhaps result in earlier adoption of planned technologies.

Automakers were already making significant investments in zero-emission vehicles, with several — including General Motors Co., Volkswagen AG, Toyota Motor Corp., AB Volvo, Audi AG and Daimler AG/Mercedes-Benz — announcing plans to fully electrify in the coming decades.[2]

In addition, rising oil prices are a driver of consumer demand for higher efficiency and electric vehicles, and recent volatility and price spikes should only add to the movement in that direction.

Finally, improvements in battery technology, as well as the investment in charging infrastructure, are making electric vehicles more accessible to the general public.

All of this supports the potential for the reinstatement of the California waiver to provide additional tailwind in support of reducing tailpipe emissions more quickly than market forces might otherwise dictate.

It is also consistent with consumers and investors voting with their wallets based on companies' environmental, social and governance standards,[3] such that many businesses — automakers included — are looking for opportunities to promote efforts to minimize their climate impacts.

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[1] <https://rhg.com/research/the-rollback-of-us-climate-policy>.

[2] <https://mashable.com/article/traditional-carmakers-going-all-electric-vehicles>.

[3] <https://www.spglobal.com/esg/insights/key-esg-trends-in-2022>.