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Endangerment Finding Reconsidered as Clean Air Waivers Are Targeted

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California's unique ability to set its own vehicle emissions standards under Section 209(b) of the Clean Air Act (CAA) is facing unprecedented legal and political challenges. At the center of the controversy is Congress's recent invocation of the Congressional Review Act (CRA) to nullify EPA waivers that have historically empowered California – and states choosing to follow its lead – to enforce stricter emissions regulations than those set at the federal level.

In May 2025, Congress passed three CRA resolutions targeting key components of California's emissions programs, including the Advanced Clean Trucks rule, Zero-Emission Airport Shuttles, and the Zero-Emission Powertrain Certification. These actions mark a significant departure from precedent, as the Government Accountability Office (GAO) had previously determined that EPA waivers were not "rules" subject to CRA review.

Compounding this issue, the Environmental Protection Agency (EPA) has proposed rescinding the 2009 CAA Greenhouse Gas (GHG) Endangerment Finding, which serves as the scientific and statutory foundation for regulating GHG emissions from vehicles.

This article explores both the legal implications of the CRA resolutions and the sweeping consequences of dismantling the Endangerment Finding itself.

Together, these developments have triggered significant legal uncertainty, raising complex questions about the CRA's applicability to waiver decisions and the future of federal GHG regulation. California and other states have responded with litigation, seeking to preserve their regulatory authority. In the meantime, states and industry stakeholders are navigating the shifting legal landscape by pursuing alternative compliance strategies – including executive orders, voluntary industry-state agreements, and land-use-based regulations like Indirect Source Review rules that may fall outside the scope of federal preemption.

For decades, California's unique waiver authority has enabled it to set some of the nation's most ambitious vehicle emissions standards – many of which have been adopted by other states. While the recent CRA resolutions pose a direct threat to that state-led framework, this article also takes a closer look at a separate, potentially more far-reaching development: the EPA's proposal to rescind the 2009 CAA GHG Endangerment Finding. Independent of the CRA controversy, this proposed rule challenges the legal foundation for federal GHG regulation of mobile source emissions under the CAA.

Background: California's Clean Air Act Waiver Authority

Under the CAA, Congress generally preempted states from setting their own emissions standards for new motor vehicles and new motor vehicle engines. However, California was granted a unique carveout under Section 209(b) of the CAA, which authorizes it to seek a waiver from the EPA to enforce its own, often stricter, vehicle emissions standards despite federal preemption.

The EPA is required to grant such waivers unless it finds that: (1) California's determination is arbitrary and capricious; (2) the state does not need its standards to meet "compelling and extraordinary conditions"; or (3)

the standards and accompanying enforcement procedures are inconsistent with Section 202(a) of the CAA. In addition, other states are permitted to adopt California's standards under certain conditions.

Over the past five decades, the EPA has granted California more than 100 CAA waivers. In addition, as of early 2025, 17 states and the District of Columbia have adopted California's light-duty vehicle standards, while 10 states have adopted its standards for heavy-duty vehicles.

Congressional Review Act Resolutions and Their Impact

The Congressional Review Act is an oversight tool that allows Congress to invalidate federal agency actions that qualify as "rules" under the statute. Under the CRA, if both the House and Senate pass a joint resolution of disapproval – signed by the president – within 60 legislative days of a rule being submitted to Congress, the rule is nullified and has no legal effect. Importantly, the CRA also bars agencies from issuing any new rule that is "substantially the same" as the one disapproved, unless Congress expressly authorizes it by law.[1]

To fall within the scope of the CRA, an agency action must meet the definition of a "rule" under the Administrative Procedure Act ("APA"), subject to exclusions such as rules of particular applicability. The GAO has consistently opined that EPA waivers granted to California under CAA Section 209(b) are not rules, but rather meet the statutory definition of an "order" because a waiver decision "mak[es] a 'final disposition' granting California a 'form of permission." According to the GAO, even if such a waiver were considered a rule, it would be a rule of particular applicability, which is exempt from CRA review.

Despite these legal distinctions, Congress has tested the limits of the CRA's reach by targeting California-specific EPA waivers for disapproval. Congress passed, and President Trump signed, three CRA resolutions disapproving key EPA waivers previously granted to California:

- **H.J. Res. 88:** Disapproved the EPA waiver for California's Advanced Clean Cars II (ACC II) program, which requires that 100 percent of new light- and medium-duty vehicle sales in the state be zero-emission vehicles (ZEVs) by 2035.

- **H.J. Res. 87:** Disapproved a suite of EPA waivers covering several heavy-duty vehicle programs, including:

  - Advanced Clean Trucks, which mandates increasing the sales of medium- and heavy-duty ZEVs over time, with targets reaching 100 percent by 2045
  - Zero-Emission Airport Shuttle requirements; and
  - The Zero-Emission Powertrain Certification program.

- **H.J. Res. 89:** Disapproved the waiver for California's "Omnibus" Low NOx regulation, which imposes stringent nitrogen oxide emissions standards for heavy-duty vehicles.

If these disapprovals are upheld by the courts, their implications would be far-reaching. First, they would rescind the underlying waivers, preventing California from enforcing the affected standards and barring other states from adopting them. Second, and perhaps more consequentially, the CRA's "substantially the same" prohibition could block the EPA from ever reissuing similar waivers or authorizations – even under future administrations – unless Congress enacts new legislation permitting it.

Legal and Procedural Controversies

Until now, the CRA has never been used to invalidate a federal agency action that involved waiving preemption or authorizing states to implement their own regulatory programs. This unprecedented application of the CRA

has ignited intense legal debate, particularly given the statute's judicial review bar, which states that "no determination, finding, action, or omission under [the CRA] shall be subject to judicial review."[2]

Some commentators argue that this non-review provision entirely bars courts from scrutinizing whether a disapproved agency action qualifies as a "rule" subject to the CRA's scope. Others counter that, at minimum, courts must retain the authority to decide whether an agency action even qualifies as a "rule" in the first place – a foundational threshold question critical to the CRA's application and Congress's disapproval power.

On June 12, 2025, California and ten other states filed suit in the U.S. District Court for the Northern District of California (Docket No.: 3:25-cv-04966) challenging the legality of the three CRA resolutions that disapproved EPA's waivers. The plaintiffs seek a declaratory judgment that these resolutions have no effect on the status or enforceability of their state emissions control programs.

The states contend that preemption waiver decisions are not "rules" under the CRA and therefore lie beyond Congress's power to disapprove under that statute. Specifically, they emphasize that the waiver authority granted to the EPA under the CAA empowers the agency only to waive federal preemption as applied to California – not to promulgate rules. Supporting this, EPA waiver decisions have consistently stated that they are "not a rule," and Congress explicitly excluded waiver decisions from the list of CAA actions subject to rulemaking requirements.[3]

Moreover, the states argue that the CRA was designed to provide guardrails to federal rulemaking – not to dismantle state regulatory authority, particularly where that authority is expressly granted by statute. The complaint asserts that employing the CRA in this manner violates key constitutional principles, including the separation of powers, the Take Care Clause, the Tenth Amendment, and fundamental tenets of federalism. Accordingly, the states maintain that Congress lacks the constitutional authority to rescind Biden Administration preemption waivers through the CRA.

Should Congress's use of the CRA withstand judicial review, the practical effect would be to invalidate EPA's waiver decisions – preempting California's ability to enforce its stricter emissions regulations and likely barring other states from enforcing their identical standards or adopting new, stricter regulations under the derivative authority of these invalidated waivers. Furthermore, without new congressional authorization, the EPA would be prohibited from issuing new "rules" substantially similar to the disapproved waivers in the future, significantly constraining regulatory flexibility on GHG emissions.

Industry and State Responses

As California's long-standing CAA waivers face renewed scrutiny, states and industry stakeholders are adopting a range of adaptive strategies to sustain progress on emission reductions. The sections below explore how states and the industry are responding to this legal uncertainty – highlighting executive actions, voluntary agreements, and innovative regulatory approaches like Indirect Source Review rules, which may offer durable, waiver-independent pathways for emissions control.

California's Response

While litigation over the state's waiver authority proceeds, California's Governor Gavin Newsom issued an executive order on June 12th directing the California Air Resources Board (CARB) to develop new zero-emission regulations. These rules are intended either to strengthen existing mandates or serve as replacements should the current regulations be invalidated in court. The order reaffirms California's commitment to phasing out gasoline- and diesel-powered vehicles.

Industry Response

In the face of legal uncertainty, voluntary agreements between manufacturers and states are becoming increasingly important as alternative pathways for emissions reductions. One notable example is the Clean Truck Partnership (CTP), an agreement among CARB, the Truck and Engine Manufacturers Association, and major truck manufacturers representing more than 90 percent of California's truck market. Under the CTP, participating manufacturers have pledged to comply with California's emissions regulations – including those subject to CRA challenges – regardless of the outcome of litigation over waiver authorizations or California's underlying regulatory authority.

Alternative Regulatory Approaches by States

Rather than setting emissions standards for vehicles directly, some states are pursuing complementary regulatory tools such as Indirect Source Review (ISR) rules. These regulations target emissions associated with activities at facilities like ports, warehouses, and distribution centers rather than regulating vehicles directly. ISRs incentivize the transition to zero-emission vehicles by regulating the stationary sources contributing to air pollution from mobile sources, rather than regulating the mobile sources themselves.

Because ISRs focus on facility impacts and land use – rather than vehicle design or emissions limits – they typically fall outside the scope of the CAA Section 209 preemption and do not require a federal waiver. As a result, ISRs are believed to offer a legally resilient strategy for advancing zero-emission goals.

The EPA Seeks to Repeal Its CAA Greenhouse Gas Mobile Source Emissions Regulatory Authority

Under Section 202(a) of the CAA, the EPA is required to regulate air pollutants that "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." In *Massachusetts v. EPA*, the Supreme Court affirmed that greenhouse gases (GHGs) qualify as such pollutants, granting the EPA authority to regulate them from motor vehicles.

In response, the Obama Administration's EPA issued two key findings that provide the legal foundation for regulating GHG emissions under the CAA:

(1) the 2009 "**Endangerment Finding**," which concluded that six GHGs – carbon dioxide (CO_2), methane, nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6) – endanger public health and welfare; and

(2) the Cause or Contribute Finding, which determined that GHG emissions from new motor vehicles contribute to harmful air pollution.

Last week, the EPA proposed rescinding the Endangerment Finding and repealing all GHG emission standards for new light-, medium-, and heavy-duty vehicles and engines. Absent this finding, the EPA would lack statutory authority under Section 202(a) of the CAA to prescribe standards for GHG emissions.

The EPA's proposal does not challenge existing tailpipe standards for traditional pollutants that directly harm human health. Under its proposed new interpretation of the CAA, GHGs – due to their global nature – fall outside the scope of Section 202(a). The EPA suggests that Section 202(a) of the CAA is best read as authorizing the regulation of air pollutants that cause or contribute to air pollution which endangers public health or welfare through local or regional exposure. Under this interpretation, CAA mobile source regulations that do not depend on the 2009 Endangerment Finding – such as those targeting traditional pollutants like hydrocarbons (HCs), carbon monoxide (CO), nitrogen oxides (NO_x), and particulate matter (PM) – would remain unaffected. These pollutants are known to harm human health and the environment directly, either through immediate exposure (e.g., inhalation or dermal contact) or by contributing to air pollution phenomena such as smog and acid rain, which also have localized or regional health effects.

Unlike these traditional pollutants, the EPA now proposes that Section 202(a) of the CAA does not authorize regulation of GHGs based on global climate change concerns because GHGs do not cause or contribute to localized air pollution in a manner that can reasonably be anticipated to endanger public health or welfare under the statute's intended scope. Accordingly, the proposed rule would repeal all motor vehicle and engine GHG emission regulations. Without the Endangerment Finding, the EPA contends there is no statutory basis for maintaining these regulations.

The EPA has proposed several alternatives for repealing the Endangerment Finding, signaling a potential shift in how the agency evaluates scientific evidence for regulation. First, the EPA questioned the scientific basis of the Endangerment Finding, stating there is "insufficient reliable information" to support the conclusion that GHG emissions from vehicles and engines endanger public health in the form of global climate change. Additionally, the agency argued that there is no "requisite technology" capable of reliably and meaningfully addressing elevated global GHG concentrations.

As part of its public comment request, the EPA is soliciting input on what scientific threshold should be used to determine whether vehicle emissions have measurable impacts on climate trends. This raises the prospect of a significantly higher evidentiary standard for future regulation – one that could make it far more difficult to regulate GHGs or other pollutants if agencies are required to demonstrate precise, quantifiable impacts on global climate outcomes before acting.

Regulatory Implications and Preemption Concerns Resulting from Rescinding the Endangerment Finding

Industry stakeholders should note that EPA's proposed rule to rescind the Endangerment Finding is still a ***proposal***, with public comments accepted through **September 15, 2025**. A public hearing is scheduled for August 19 and 20, with pre-registration for verbal testimony due **August 12, 2025**. Stakeholders should carefully review the proposed rule and consider submitting comments to the docket (Docket ID No. EPA-HQ-OAR-2025-0194).

While the EPA asserts that Title II of the CAA still preempts state GHG emission standards, some legal experts warn that rescinding the Endangerment Finding could open the door for more aggressive state-level regulation. Specifically, Section 209(a) of the CAA prohibits states from adopting or enforcing emission standards for new motor vehicles or engines "subject to this part" of the CAA. However, if the EPA revokes the Endangerment Finding and ceases regulating GHG emissions from vehicles, no federal GHG standards would apply, potentially meaning no vehicles would be "subject to this part" for those emissions.

The Supreme Court's decision in *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011), also factors in, affirming that federal common-law claims on GHG emissions are preempted, as Congress tasked the EPA with regulating these emissions. But an absence of federal regulation could shift the balance, prompting courts to reassess the interplay between federal regulatory inaction and federal common-law protections.

The fallout of any rollback of GHG emissions regulations at the federal level raises a novel legal question: whether California would still require a waiver under Section 209(b) to enforce its zero-emission vehicle standards, or whether Section 209(a) preemption would no longer apply in the absence of federal GHG regulation. While courts have yet to address this exact scenario – since the EPA has regulated GHGs continuously since 2009 – it remains uncertain whether federal preemption would continue to bar state standards. Some legal scholars argue that the EPA's broad authority under the CAA to regulate pollutants means a refusal to regulate could be viewed as a declination to act, effectively leaving regulatory authority to the states. Nonetheless, it is also possible that courts could uphold federal preemption on statutory or policy grounds to avoid a fragmented regulatory landscape.

Next Steps for Businesses

As legal, regulatory, and political uncertainty surrounding federal and state emissions authority continues to unfold, stakeholders across the transportation, manufacturing, logistics, and energy sectors should stay closely engaged and begin preparing for a range of potential outcomes.

1. Legal Review

First, companies should consult legal counsel to assess how the combined impacts of the EPA's proposed rule and the recent CRA resolutions may impact their regulatory obligations, business operations, and strategic planning. Legal review is critical for companies currently operating under California-based emissions standards, investing in zero-emission technologies, or acting based on federal climate regulations for business planning or permitting.

2. Risk Management and Compliance Strategy

Second, companies should evaluate their regulatory posture and consider proactive steps to manage risk in the face of shifting federal and state requirements. This may include reviewing internal compliance plans, supply chain strategies, and product development timelines tied to California's standards or federal GHG regulations. Participating in or forming voluntary agreements, engaging with state and local regulators on land-use-based mechanisms like Indirect Source Review (ISR) rules, and diversifying compliance approaches can help create predictability amid regulatory flux.

3. Monitor Legal Developments

Companies should monitor the progress of state-led litigation challenging the CRA resolutions, potential judicial review of EPA's waiver authority, and participating in and tracking the rulemaking process for the EPA's Endangerment Finding proposal will be essential. These developments could fundamentally reshape the roles of federal and state governments in emissions regulation. While the regulatory landscape remains unsettled, proactive legal and strategic planning now can help businesses stay ahead of potential disruptions.

How Baker Donelson Can Assist

The proposed rollback of EPA's and states' GHG authority marks a significant shift in environmental regulation. While the final outcome remains uncertain, early legal and strategic planning can help businesses navigate a potentially fragmented and rapidly evolving regulatory landscape.

Baker Donelson's Environmental Group is here to help your organization navigate the evolving regulatory environment surrounding California's CAA waivers and the EPA's proposal to rescind the 2009 CAA GHG Endangerment Finding. If you have questions about how recent Congressional Review Act resolutions or potential changes to federal greenhouse gas regulations may impact your compliance obligations, state emissions programs, or strategic planning, our team is ready to assist.

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[1] 5 U.S.C. § 801(b)(2)

[2] 5 U.S.C. § 805.

[3] 42 U.S.C. § 7607(d)(1)