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In this issue:

Major Developments in EPA/CARB Preemption Waiver Dispute

By Joel D. Eagle

On June 12, 2025, President Trump signed three Congressional Review Act (CRA) resolutions that revoked the U.S. Environmental Protection Agency's (EPA) Clean Air Act (CAA) preemption waivers previously granted to the California Air Resources Board (CARB). These waivers had allowed California to enforce stricter vehicle emissions standards than those set at the federal level, including the Advanced Clean Cars II, Advanced Clean Trucks, and Heavy-Duty Engine Omnibus NOx regulations. The CRA process, which enables Congress to overturn certain federal agency rules, was used in this instance to target California's authority to set its own vehicle emissions standards, a move EPA celebrated as a step toward ending what it described as a de facto national electric vehicle (EV) mandate and what CARB claims is an illegal use of the CRA.

CRA Resolutions and Presidential Executive Orders

The CRA resolutions were passed by both chambers of Congress and promptly signed by President Trump on June 12. EPA Administrator Lee Zeldin praised the action, stating that it would restore consumer choice and economic liberty and end California's ability to set national policy through its waivers. The administration's position is that the Biden-era EPA waivers allowed California to impose significant costs and limit consumer choice nationwide and that the rollback will benefit American auto workers and the broader economy. These themes are consistent with several Executive Orders President Trump signed early in his second term, including the "Unleashing American Energy" and "Protecting American Energy from State Overreach" orders.

Immediate Legal Response from California and Other States

In response to the president's signing of the CRA resolutions, California, along with Colorado, Delaware, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington immediately filed suit in federal court challenging the legality of the CRA actions. The states argue that EPA waivers are not federal rules subject to congressional override under the CRA and that the rollback threatens public health and undermines state-level innovation and investment in EV technology and infrastructure. The legal status of the affected regulations is uncertain at this time. The states have not sought a preliminary injunction to allow continued enforcement of the subject regulations, but California has reserved the right to seek immediate relief if necessary.

CARB has responded proactively to the uncertainty created by the CRA process and ensuing litigation. In May 2025, anticipating Congress' forthcoming vote and the president's signature of the CRA resolutions, CARB issued a Manufacturers Advisory Correspondence stating its position that the CRA resolutions are "illegal actions and are thus invalid" and that it will continue to accept and process 2026 model year certification applications under the existing regulations. CARB has indicated that further guidance will be provided for future model years, signaling a careful, year-by-year approach as the legal status of its regulations evolves.

California Governor Gavin Newsom also issued Executive Order N-27-25 on June 12, 2025 (the same day President Trump signed the CRA resolutions), reaffirming California's commitment to zero-emission vehicle (ZEV) adoption and directing CARB to propose new or alternative regulations to reduce greenhouse gases and other pollutants from vehicles. The order also requires CARB to maintain a public list of manufacturers that continue to certify under the affected regulations, continue implementation of the Clean Truck Partnership, and assess additional actions to advance ZEV adoption. Recommendations for further action are to be submitted to the governor within 60 days.

Industry Implications and Potential Strategies

The aforementioned regulatory and legal uncertainties present significant challenges for vehicle manufacturers, especially those operating in or selling to California and CARB states. Manufacturers should closely monitor the litigation, as the outcome could either nullify the stricter California standards or reinstate them, potentially creating a patchwork of regulatory requirements across the country. In the interim, manufacturers must consider whether to comply with existing CARB requirements for the 2026 model year, as CARB has stated it will process certifications as usual.

Manufacturers may also wish to consider developing contingency plans for both scenarios: one in which the CRA actions are upheld and California's stricter standards are invalidated and another in which the courts side with California, reinstating the state's authority. This includes evaluating supply chains, product development timelines, and certification strategies to ensure flexibility and compliance under either outcome.

Manufacturers should also consider engaging with CARB's ongoing public sessions and dialogue opportunities, which are designed to inform additional actions to advance ZEV adoption. Participation in these forums can provide valuable insights into regulatory trends and offer opportunities to influence future policy directions.

Conclusion

The EPA/CARB preemption waiver dispute represents a pivotal moment for vehicle emissions regulation in the United States. The outcome of the ongoing litigation and regulatory responses will have far-reaching implications for vehicle manufacturers, fleet operators, and the broader automotive industry. We will continue to monitor these actions to help clients navigate this evolving landscape and assist with continued compliance and competitiveness.

Disapproval of CAA Waivers Prompts Industry Petition Challenging Clean Truck Partnership

By Ashley C. Kirk and Joel D. Eagle

Congress' recent disapproval of three CAA waivers previously granted to CARB (see previous article) has opened the door to further challenge to CARB's regulatory authority. Under the federal CAA, California is permitted to adopt and enforce its own separate and more stringent air standards that have a wider scope than their federal counterparts. This authority, however, is subject to EPA's issuance of preemption waivers to California, which allow the state to implement its own mobile emissions regulations. Waivers that EPA issued during the Biden administration were recently disapproved by Congress pursuant to the CRA, including waivers for California's Advanced Clean Cars II, Advanced Clean Trucks, and Heavy-Duty Engine Omnibus NOx standards.

Without these waivers in effect, industry now seeks to challenge CARB's authority to enforce the 2023 Clean Truck Partnership (CTP), an agreement between CARB, the Truck and Engine Manufacturers Association, and other major manufacturers of on-road heavy-duty trucks and engines (OEMs). Under the CTP, OEMs agreed to comply with California's vehicle standards and to sell and adopt zero-emission technology. In return, CARB agreed to work with manufacturers to provide more lead time to meet CARB's existing regulatory requirements before imposing new regulations, and to support development of zero-emission infrastructure.

Shortly after President Trump signed Congress' disapproval of the CAA waivers, the Western States Trucking Association (WSTA) filed a petition with the California Office of Administrative Law in which the WSTA seeks a determination that the CTP now represents an improperly adopted regulation under the California Administrative Procedure Act. WSTA claims that without federal authorization to adopt and enforce the standards at issue in the CTP, the CTP is now an "underground regulation" that would improperly enable CARB to enforce rules that are not permitted under federal law. The WSTA petition further notes that CARB's obligations under the CTP include amendments to certain CARB standards – obligations which it now no longer has the authority to fulfill.

CARB's position is that despite disapproval of the waivers, there has been no change to the CTP and it intends to continue to enforce the standards referenced in the agreement. CARB's position is likely based on a provision in the CTP providing that the OEMs committed to their obligations under the CTP "irrespective of the outcome of any litigation challenging the waivers or authorizations for those regulations or of CARB's overall authority to implement those regulations."

While the outcome of the petition and California's challenge to Congress' disapproval of the CAA waivers is also pending, the regulatory landscape for manufacturers remains uncertain. If CARB continues to enforce the now unauthorized standards under the CTP, it will likely prompt further legal challenges. Given the significance of whether CARB is permitted to enforce the CTP and the underlying vehicle standards, vehicle manufacturers should carefully monitor these fast-moving developments.

New Procedures for Requesting Tariff Inclusions on Auto Parts: What the Industry Needs to Know

By Francesca M.S. Guerrero, Kerem Bilge and Aaron C. Mandelbaum

On June 24, 2025, the Department of Commerce's International Trade Administration (ITA) announced new procedures for U.S. producers of auto parts seeking to have additional parts included on the list of those subject to 25% tariffs under the Section 232 review of automobiles and auto parts. These procedures follow President Trump's proclamation issued on March 26, 2025, which expanded the scope of Section 232 tariffs and outlined a process for further adjustments.

Quarterly Submission Windows for Tariff Requests

The ITA has established a structured process for submitting requests, featuring four two-week submission windows each year. These windows will occur in January, April, July, and October. The inaugural window opened on July 1. During each window, the ITA will accept and review requests on a rolling basis. After each window closes, a non-confidential version of every valid request will be made publicly available for a 14-day comment period. The ITA is committed to issuing a determination within 60 days of receiving each request.

Requirements for Submitting a Request

To ensure a request is considered, it must include:

- **Requester identification:** The name and contact information of the party submitting the request
- **Item description:** A detailed description of the auto part for which tariff inclusion is sought
- **HTSUS classification:** The item's eight- or 10-digit Harmonized Tariff Schedule of the United States (HTSUS) number
- **Explanation of auto part status:** An explanation for why the item qualifies as an auto part
- **Domestic industry impact:** Information on how the domestic industry is affected by imports of the item
- **Import and production statistics:** Data on both imports and domestic production of the item
- **National security rationale:** A description of how and to what extent imports of the item have increased in a way that threatens to impair national security or undermine the objectives of the Section 232 automobile tariffs

Additional Authority for the Secretary of Commerce

Beyond the request process, the Secretary of Commerce retains the authority to add auto parts to the tariff list independently, as provided in the March 26 proclamation. This means that changes to the tariff list can occur both through industry requests and at the Secretary's discretion.

Implications for Automotive Companies

For companies in the automotive sector, these new procedures present both opportunities and challenges. Producers seeking additional tariffs on imported auto parts should prepare to submit detailed requests during the designated windows. Companies wishing to avoid new tariffs should closely monitor the public posting of requests each quarter and consider submitting comments opposing the inclusion of specific parts.

Staying informed and engaged in this process will be critical for companies seeking to manage the impact of Section 232 tariffs on their supply chains and operations. The new procedures underscore the importance of proactive participation in the regulatory process for all stakeholders in the automotive industry.

FOR MORE INFORMATION

For more information, please contact:

Joel D. Eagle
Partner, Environmental and Automotive & Mobility
216.566.5938 | Joel.Eagle@ThompsonHine.com

Francesca M.S. Guerrero
Partner, International Trade and Automotive & Mobility
202.973.2774 | Francesca.Guerrero@ThompsonHine.com

Kerem Bilge
Counsel, International Trade and Automotive & Mobility
202.263.4104 | Kerem.Bilge@ThompsonHine.com

Ashley C. Kirk
Managing Associate, Environmental
216.566.5585 | Ashley.Kirk@ThompsonHine.com

Aaron C. Mandelbaum
Associate, International Trade
202.973.2737 | Aaron.Mandelbaum@ThompsonHine.com