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CARB and EPA War Over Clean Air Act Waivers Continues

By Joel D. Eagle, Aren K. Olson and Ashley C. Kirk

The fight over California's authority to set its own vehicle emissions standards continues in full force. As noted in our previous MMQ articles, the Clean Air Act ("CAA") allows California to adopt stricter air quality standards than those established at the federal level, but only with EPA's blessing in the form of preemption waivers. In 2025, Congress used the Congressional Review Act ("CRA") to disapprove of several Biden-era waivers issued with respect to CARB's Advanced Clean Cars II ("ACC II"), Advanced Clean Trucks ("ACT"), and Heavy-Duty Low NOx ("Low NOx") programs. The fallout has been swift: multiple lawsuits now challenge both the CRA disapproval itself and its broader implications for CARB's enforcement authority. For vehicle manufacturers and fleet operators, the bottom line is that overlapping and conflicting federal-state directives continue to make compliance planning exceptionally difficult.

Here is where the cases stand.

CARB's Challenge to the CRA Rejection of Its CAA Waivers

Almost immediately after President Trump signed the CRA resolutions into law (H.J. Res. 87, 88, and 89), California filed suit against the federal government in *State of California, et al. v. United States of America, et al.*, No. 4:25-cv-04966 (N.D. Cal.), arguing that the CAA waivers are "orders"—not "rules" subject to the CRA. The federal government contends otherwise, maintaining that federal courts lack jurisdiction to review CRA actions at all under the statute's judicial review bar at 5 U.S.C. § 805. In February 2026, the federal court held a dispositive motion hearing and appeared open to dismissing at least some of CARB's claims, noting that under recent Ninth Circuit precedent, CARB's *ultra vires* and statutory claims face a "significant challenge." The court promised to issue a decision in due course, acknowledging that "everybody just wants to get to the court of appeals as soon as possible," anyway, "if not further."

No decision has been issued at this time, but companies in the transportation space should closely watch for further orders, appeals, or other developments that may impact their compliance obligations.

Whether CARB May Enforce the Clean Trucks Partnership Absent Current Waivers

Uncertainty over CARB's post-revocation enforcement authority has also produced litigation, in *Daimler Truck*

North America LLC, et al. v. CA Air Resources Board, et al., No. 2:25-cv-02255 (E.D. Cal.). In 2023, CARB entered into the Clean Truck Partnership ("CTP") with several large OEMs, requiring the OEMs to meet California's vehicle standards and adopt zero-emission technology. After the CRA revocations, OEMs found themselves "caught in the crossfire"—CARB demanded continued compliance through the CTP, while DOJ issued cease-and-desist letters ordering manufacturers to stop complying with the now-preempted standards.

In 2025, the OEMs sought refuge in the courts, filing suit against CARB and moving for a preliminary injunction barring CARB from enforcing the CTP and certain state regulations. In October 2025, the court granted the injunction in part, enjoining CARB from enforcing the CTP because the CTP contained air quality standards for which CARB had never obtained a CAA waiver. However, the court declined to enjoin enforcement of CARB's other regulations (including the Low NOx and ACT rules), as CARB had previously issued an advisory confirming that it would not prohibit the sale of federally compliant vehicles until further notice. The parties have now filed cross-motions for summary judgment, with a hearing set for August 2026, which will debate, among other things, whether CARB's emissions standards are preempted for lack of valid waivers. A ruling could resolve the merits of CARB's regulatory authority as early as late 2026 or early 2027, which would presumably help clarify the compliance landscape for OEMs.

DOJ's Additional Attack on CARB CO_2 Standards

In March 2026, DOJ filed suit against CARB on yet another front in *United States of America, et al. v. California Air Resources Board, et al.*, No. 26-at-00450 (E.D. Cal.), challenging California's Advanced Clean Cars I ("ACC I") emergency regulations for light-duty vehicles as preempted by the Energy Policy and Conservation Act ("EPCA"). The ACC I program includes both tailpipe CO_2 emission standards and zero-emission vehicle ("ZEV") sales mandates for passenger cars and light-duty trucks. This action is significant because it seeks to undermine CARB's regulatory authority on an additional front—beyond the CRA resolutions denying California's CAA waivers—by invoking federal fuel-economy preemption under EPCA. The filing signals that the federal government is intent on challenging CARB's regulatory authority on multiple legal fronts.

Conclusion

These legal developments continue to underpin an uncertain regulatory environment for the automotive industry. Manufacturers that adjusted product roadmaps in reliance on CARB's framework now face contested mandates on multiple fronts and must manage the risk that the standards they are meeting could be declared unenforceable, or that standards they have abandoned could be reinstated. Industry participants should closely follow these cases as the litigation continues.

State PFAS-in-Products Laws and Impacts for the Transportation Industry

By Joel D. Eagle and Aren K. Olson

Recently, three states — Minnesota, Maine, and New Mexico — have enacted "PFAS-in-products" laws with rapidly approaching reporting, labeling, and compliance obligations that the transportation industry must understand. With federal regulations still developing, these states have each enacted their own laws restricting PFAS in products — each with a distinct regulatory approach and differing compliance obligations.

Minnesota: Reporting on the Immediate Horizon

Minnesota's "Amara's Law" is among the most comprehensive PFAS-in-products laws in the country. Since 2025, the law has phased out the sale or distribution of products containing "intentionally added" PFAS in 11 product categories — including fabric treatments, textile furnishings, and others — and in 2032, it will extend that prohibition to all products unless a Currently Unavoidable Use ("CUU") determination is obtained.

The most immediate obligation for transportation companies is the state's reporting requirement. By September 15, 2026, the manufacturer of any product that: (1) is manufactured after July 1, 2023; (2) contains intentionally added PFAS; and (3) is sold, offered for sale, or distributed in Minnesota must submit detailed information to Minnesota's agency — including each PFAS' identity, amount, and purpose — through an online reporting system. Manufacturers must meet a strict diligence standard that requires coordination with their supply chains until “all required information is known.” Those unable to meet the deadline may apply for a single 90-day extension, provided the request is postmarked by August 16, 2026.

Minnesota's law is potentially the most burdensome of the three states for manufacturers in the transportation space. Unlike Maine and New Mexico, which exempt motor vehicles and motor vehicle equipment from certain obligations, Minnesota's statute contains no such carve-out. Exemptions only exist for a few discrete product categories, such as used items and items "for which federal law governs the presence of PFAS.” In Minnesota, therefore, most products with intentionally added PFAS, including those in the transportation sector, will be subject to both the reporting requirement and sales prohibitions.

Maine: Broad Prohibitions with a Motor Vehicle Carve-Out

Maine's PFAS-in-products law establishes phased sales prohibitions for products containing intentionally added PFAS. Category-specific bans began as early as 2023 and expanded in 2026 to cover textile articles, cleaning products, and other products. The broadest ban, which covers nearly all remaining products, takes effect in 2032, unless a CUU determination is obtained.

Of particular significance to the transportation space, Maine exempts motor vehicles and motor vehicle equipment from its prohibitions. The exemption, however, does not extend to textile articles or refrigerants included as components of such products, which remain subject to the phased prohibitions — textile articles by 2032 and refrigerants by 2040. Entities qualifying for the motor vehicle exemption should carefully document their eligibility.

Separately, and unlike Minnesota, Maine does not impose a broad reporting requirement on manufacturers. While Maine’s law originally included a general notification obligation, a 2024 amendment eliminated it. Reporting is now required only for products that receive a CUU determination.

New Mexico: A Distinct Labeling Obligation

New Mexico's PFAS-in-products law follows a similar structure to Maine’s, with category-specific bans beginning in 2027, a blanket ban in 2032, and a motor vehicle exemption from its sales prohibitions and reporting requirements.

Where New Mexico diverges, and where transportation companies face distinct compliance challenges, is labeling. Under New Mexico's law, the manufacturers of products with intentionally added PFAS manufactured after January 1, 2027, must display a universal PFAS label on the products — an Erlenmeyer flask symbol with the word "PFAS" — unless a labeling waiver is obtained. Labeling waiver requests are due October 31, 2026. Neither motor vehicles nor motor vehicle equipment are exempt from New Mexico’s labeling requirements, as they are from the state’s sales prohibitions and reporting requirements.

Critically, however, motor vehicles and motor vehicle equipment are able to comply with reduced labeling requirements, so long as they meet the definition of "complex durable goods,” which are manufactured goods composed of 100+ components with an intended useful life of 5+ years. Complex durable goods may satisfy their obligation through labeling in consumer-facing product specification sheets and operation and maintenance manuals, rather than labeling affixed directly to the product itself. Companies that may qualify should evaluate their eligibility and prepare compliance strategies before the October 31, 2026, waiver deadline.

Implications and Key Takeaways

Considering these emerging PFAS laws, transportation entities that manufacture, sell or distribute products in affected states should evaluate the PFAS content of their products, determine whether any state-specific exemptions apply, and take prompt action to comply with approaching deadlines. Given the patchwork of state requirements and the absence of a uniform exemption framework, proactive and jurisdiction-specific compliance planning is not just advisable, it is essential.

EPA Proposes Two-Year Delay of Tier 4 Vehicle Emissions Standards

By Joel D. Eagle and Ashley C. Kirk

On May 14, 2026, EPA announced a proposed rule to delay the Tier 4 criteria pollutant standards for light-duty and medium-duty vehicles for two years. If EPA's rule is finalized as proposed, the criteria pollutant emission standards established for model years (MYs) 2025 and beyond (*i.e.,* the 2014 Tier 3 Rule) would apply to MYs 2027 and 2028, pushing back compliance with the 2024 Tier 4 Rule promulgated under the Biden Administration until MY 2029. EPA's rulemaking additionally includes proposed changes to the test protocols used to evaluate emissions performance for certification and related regulatory issues.

The 2024 Tier 4 "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light Duty and Medium-Duty Vehicles" established criteria pollutant standards that significantly tightened limits on emissions from passenger cars, SUVs, pickup trucks, and vans. Pollutants included in the rule are non-methane organic gases (NMOG), nitrogen oxides (NOx), particulate matter (PM), and other criteria pollutants and their precursors. When the Tier 4 rule was finalized in 2024, EPA described the Tier 4 standards as performance-based emissions standards, where manufacturers would choose the mix of technologies they believed best suited their fleets to meet the standards. Critics of the rule claimed that the standards essentially forced the auto industry to focus development on electric vehicles. The Tier 4 standards were set to gradually phase in from MYs 2027 with final implementation in MYs 2032.

With this proposed delay, EPA states that its reconsideration of the Tier 4 rules is in response to the "overwhelming rejection of Electric Vehicles (EVs) by the American people" and to give adequate lead time for manufacturers to phase in Tier 4 standards with MY 2029 fleets that "better fit consumer demand for less EVs."

EPA states that the proposed delay also serves to give EPA time to amend the Biden-era Tier 4 standards. EPA's May 14 proposal is the first phase in a two-part rulemaking where EPA plans to reconsider the Tier 4 standards and related program elements.

EPA held public hearings on its proposal on June 3 and 4. Comments on the proposed delay are due July 6, 2026. Thompson Hine's environmental and mobility teams are tracking this rulemaking and will provide updates as it progresses toward finalization.

Transport Canada Signals Readiness to Implement Comprehensive Manufacturer Reporting Program

By Christie Iannetta and Will Godfrey

Transport Canada appears poised to issue proposed regulations for its new manufacturer reporting program titled Analysis of Technical Information for Vehicles and Equipment (ACTIVE). ACTIVE is intended to be a comprehensive information gathering and reporting program for motor vehicle manufacturers producing as few as 500 vehicles per year and manufacturers of certain types of motor vehicle equipment (*i.e.,* child restraints and tires). The program's objective is to provide the regulator with data in the hands of the manufacturer that may be an early indicator of emerging safety-related issues. While in the United States, the National Highway Traffic Safety Administration (NHTSA) has had longstanding authority to collect this general type of information under the authority of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act and Early Warning Reporting (EWR) regulations since the early 2000s, there has been no corollary reporting program in Canada up to this point.

As of the last publicly available informal proposal in a 2021 Policy Paper, TC has indicated an intent to seek various categories of information, some of which align with the existing EWR regulations but many of which do not. Of note, TC proposed the submission of: (1) Safety Evaluation Lists (SEL) at a global (not Canada-specific) level for high volume manufacturers (10,000 or more vehicles); (2) proactive reports of fatalities (global), injuries and fires (Canada), and (3) ad hoc submissions of field reports. SEL is a concept developed by NHTSA in the course of certain Consent Orders wherein a manufacturer presents to the regulator a list of the potential safety and noncompliance issues it is evaluating internally, the status of the evaluation and their disposition. The SEL process provides regulators with direct and nearly contemporaneous insight into the topics under review by manufacturers.

ACTIVE is one example of TC's efforts to modernize and enhance its existing oversight of the industry by utilizing data analytics and internally developed manufacturer information rather than lagging indicators of data, such as consumer complaints. TC's most recent Forward Regulatory Plan notes an intent to publish proposed regulations in the *Canada Gazette* in Fall 2026 with a 75-day public comment period.

Implications and Key Takeaways

We understand that NHTSA and TC have been in active communications about ACTIVE. While TC's ACTIVE proposal may align with existing EWR regulations in some respects, it is very possible that TC will propose categories of data that are not currently required under the EWR program and/or that the data formats and reporting intervals are different. TC's ACTIVE proposal may also fuel efforts by NHTSA to revamp its own EWR regulations as outlined in its 2023 Report to Congress.

Manufacturers should now start to consider whether they have infrastructures in place to meet anticipated reporting requirements under both programs, be prepared to comment on the forthcoming ACTIVE proposal and anticipate a quick compliance implementation period.

NHTSA Bans the Importation and Sale of Certain Air Bag Inflators

Following an investigation, in April 2026, NHTSA issued a Final Decision that certain frontal driver air bag inflators contain a safety defect. Per NHTSA's Final Decision, the air bag inflators were imported into the United States by unknown importers and likely illegally. NHTSA described that it is aware of 12 instances of the inflator rupturing in vehicles after the vehicle's air bag was commanded to deploy, resulting in 10 fatalities and two severe injuries. Because the agency decided that the subject inflators contain a safety defect, per the Vehicle Safety Act, they are prohibited from being imported, sold, offered for sale or otherwise introduced into interstate commerce. The agency's Final Decision also orders the manufacturer to conduct a safety recall campaign with notice and a free remedy. Whether the manufacturer in this instance complies with the order remains to be seen.

NHTSA had been monitoring reports of potentially substandard airbag inflators for many years and issued consumer advisories about the possible dangers of purchasing aftermarket airbags in the interim. However, after reports of fatalities, it moved directly to open an Engineering Analysis investigation (by passing the traditional two-step investigation process) and then proceeded to the decision-making process.

Implications and Key Takeaways

NHTSA infrequently utilizes its regulatory process to determine that a safety-related defect exists in a motor vehicle or motor vehicle equipment. In this instance, the agency's investigation was a highly focused one that side-stepped traditional investigative processes and timelines based on the potential for a high-severity outcome. The underlying investigation and final decision reinforce that when the circumstances warrant, NHTSA can take action outside of its usual investigative timeline and implement degrees of flexibility in its processes.

Supreme Court Rules Negligent-Hiring Claims Against Transportation Brokers Are Not Preempted by Federal Law

By Jessica MacKeigan

Overview

On May 14, 2026, the United States Supreme Court issued a unanimous decision in *Montgomery v. Caribe Transport II, LLC* that will have significant implications for the trucking and logistics industries. The Court held that state-law negligent-hiring claims against transportation brokers are not preempted by the Federal Aviation Administration Authorization Act ("FAAAA") because such claims fall within the statute's safety exception, which preserves state authority to regulate safety "with respect to motor vehicles."

The decision resolves a circuit split and opens the door for injured parties to pursue negligence claims against freight brokers who select unsafe motor carriers—a ruling that carries practical consequences for brokers, shippers, carriers, and the broader supply chain.

Background: The FAAAA and the Role of Brokers

Today, as observed by the Supreme Court, "roughly 28,000 brokers arrange transportation for about a third of all freight shipped in the United States by more than 780,000 carriers." Congress enacted the FAAAA, which preempts state laws "related to a price, route, or service" of any motor carrier or broker "with respect to the transportation of property," to promote economic deregulation of the trucking industry and prevent state regulation from inhibiting competition.

However, the FAAAA includes a critical safety exception providing that the preemption provision "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." Congress designed this exception "to ensure that its preemption of States' economic authority over motor carriers of property did 'not restrict' the preexisting and traditional state police power over safety."

The Facts of the Case

Petitioner Shawn Montgomery sustained severe and permanent injuries, including the amputation of his leg, when his tractor-trailer was struck by a truck driven by Yosniel Varela-Mojena. Varela-Mojena was driving for Caribe Transport II, LLC, a motor carrier, and the shipment had been coordinated by C.H. Robinson Worldwide, Inc., a transportation broker.

Montgomery alleged that C.H. Robinson negligently hired Caribe Transport despite knowledge that the carrier had a "conditional" safety rating from the Federal Motor Carrier Safety Administration ("FMCSA"). The FMCSA had found Caribe Transport to be deficient with respect to driver qualification, hours of service, inspection, repair and maintenance, recordable crash rate, and more.

The District Court and the Seventh Circuit held that the FAAAA preempted Montgomery's negligent-hiring claim and that the safety exception did not apply.

The Court's Analysis

Writing for a unanimous Court, Justice Barrett held that Montgomery's negligent-hiring claim falls squarely within the FAAAA's safety exception. The Court's reasoning proceeded in several steps:

First, the Court confirmed that common-law duties and standards of care form part of a state's authority to regulate safety. Negligent-hiring claims impose a duty of reasonable care in employing a contractor for work carrying a risk of physical harm.

Second, the Court interpreted the phrase "with respect to motor vehicles" to mean "concerns" the vehicles used in transportation, consistent with its prior construction of the same phrase in *Dan's City Used Cars, Inc. v. Pelkey*.

Third, applying that interpretation, the Court concluded that requiring C.H. Robinson to exercise ordinary care in selecting a carrier "concerns" motor vehicles—most obviously, the trucks that will transport the goods.

The Court rejected C.H. Robinson's counterarguments, including that the safety exception would "swallow" the preemption provision, that it would create surplusage, and that it would create an anomaly with the FAAAA's subsection (b) governing intrastate broker regulation.

Justice Kavanaugh's Concurrence

Justice Kavanaugh, joined by Justice Alito, concurred but emphasized that the case was "closer than the Court's opinion perhaps might suggest." He acknowledged two contextual considerations favoring the brokers: (1) Congress mandated minimum insurance coverage for trucking companies but not for brokers, suggesting it did not anticipate state tort suits against brokers, and (2) the FAAAA does not permit state tort suits against brokers for arranging intrastate transportation, creating an anomaly with the plaintiff's position on interstate trips.

However, Justice Kavanaugh concluded that other contextual factors "decisively tilt in the opposite direction," particularly the overall structure of the safety regime for the trucking industry and the absence of meaningful federal safety regulation of brokers at the federal level. He noted that it would be doubtful for Congress, "through such indirect language in an economic-deregulation statute," to allow brokers to "operate in a black hole with no meaningful safety-related regulation."

Justice Kavanaugh also offered a practical observation: brokers "should be able to successfully defend against state tort suits if the brokers have acted reasonably and arranged transportation with reputable trucking companies."

Key Takeaways for Trucking and Logistics Industry Clients

Brokers now face state-law tort exposure for negligent carrier selection. The Court's decision removes the federal preemption shield that brokers in several circuits had relied upon since 2020. Injured parties may now bring negligent-hiring claims against brokers in state or federal court under applicable state tort law.

Carrier safety ratings matter more than ever. The facts of this case—where the broker hired a carrier with a "conditional" FMCSA safety rating and documented deficiencies—will likely become the template for plaintiff-side litigation. Brokers must be vigilant in reviewing and documenting carrier safety records before engaging them for shipments.

Reasonable vetting is an effective defense. As plaintiff's own counsel acknowledged, brokers "just have to hire carriers that actually have a reasonable policy" and will not face liability if they are "asking the hard questions of the carrier." Demonstrating a reasonable selection process will be critical to defeating claims at summary judgment or trial.

Proximate cause remains a limiting principle. State tort law's proximate-cause requirement should help protect brokers from excessive or speculative liability. The decision does not create strict liability for brokers whenever an accident occurs.

Litigation and insurance costs are expected to rise. Justice Kavanaugh acknowledged the brokers' concerns that "the costs to brokers of litigation and insurance may be significant even when brokers prevail in lawsuits" and that these costs "will cascade through the economy and be paid in part by American consumers in the form of higher prices."

No meaningful federal safety regulation fills the gap. The Court noted that the FMCSA requires brokers to select a federally registered carrier but does not otherwise impose safety standards on broker hiring decisions. This regulatory gap means that state tort law will serve as the primary mechanism to incentivize safer carrier selection by brokers.

Motor carriers should expect increased scrutiny from brokers. Carriers with poor safety records, conditional ratings, or documented FMCSA deficiencies may find it more difficult to secure freight from brokers looking to manage their new liability exposure.

Congressional action remains possible. Justice Kavanaugh noted that brokers and their allies "may of course (among other possibilities) ask Congress and the President to change federal law." Industry participants should monitor potential legislative efforts to limit broker liability or impose federal safety standards on broker hiring practices.

Conclusion

Montgomery v. Caribe Transport II, LLC represents a watershed moment for the freight brokerage industry. The decision confirms that the FAAAA's economic deregulation of the trucking industry does not shield brokers from state tort liability when they negligently select unsafe carriers. For brokers, the path forward is clear: implement and document robust carrier vetting procedures, pay close attention to FMCSA safety ratings and inspection histories, and consult with counsel about insurance coverage adequacy. For carriers, maintaining strong safety records is now not only a regulatory obligation but a commercial necessity in retaining broker relationships. For shippers, the decision provides additional avenues for recovery when injuries result from the transportation of their goods.

We will continue to monitor developments in this area, including any legislative responses to the decision. Please contact us if you have questions about how this ruling may affect your business operations, contracting practices, or risk management strategies.

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