

NESCAUM TESTIMONY
EPA Hearing on Reconsideration of Previous Withdrawal of a Waiver of Preemption
June 2, 2021

Good morning. My name is Elaine O’Grady. I am the Policy and Program Director for Clean Transportation at the Northeast States for Coordinated Air Use Management (NESCAUM).

NESCAUM is the regional association of state air quality agencies in the Northeast and has a long history of working with states on adopting and implementing California’s motor vehicle emission standards. In fact, seven of our eight member states have exercised their right under Section 177 of the Clean Air Act to adopt California’s clean car standards, and they’ve been directly impacted by the prior administration’s actions in the SAFE 1 proceeding.

My testimony today will focus on the actions in SAFE 1 that pertain to Section 177. For the record, however, we strongly urge EPA to quickly reinstate California’s waiver for its greenhouse gas and ZEV standards because the withdrawal was an invalid exercise of EPA’s authority. Now, I’d like to turn to SAFE 1’s unlawful attempt to restrict state rights under Section 177.

First and foremost, the interpretation of Section 177 in the SAFE 1 proceeding was inappropriate and unauthorized. Section 177 is carefully drawn to empower states to decide for themselves whether to adopt California’s standards, without giving EPA any oversight role whatsoever.

This authority provides states with a critical tool to tackle motor vehicle emissions. States have been utilizing this tool for over 30 years and first began adopting California’s greenhouse gas standards over 15 years ago. Our states rely on these standards for both air quality and climate action planning to protect public health and welfare. Notably, no approval or review from EPA is needed for states to opt-in to the California program. Moreover, states, not EPA, are responsible for implementing and enforcing the standards.

In short, Section 177 gives states the discretion to adopt California standards, and EPA has no authority to take this choice away from the states in the context of the SAFE 1 proceeding or otherwise.

Second, SAFE 1’s contention that Section 177 restricts states from adopting California’s greenhouse gas standards is erroneous. The plain language of Section 177 unambiguously grants states the right to adopt “California standards for which a waiver has been granted.”

There are no limitations relating to specific pollutants in the statutory text. While the text does place limits on which states may utilize the provision, it places no limits on which standards eligible states may adopt.

Grasping at straws, SAFE 1 pointed to the reference to “nonattainment areas” in the provision’s title and placement in Part D of Title 1 as support for its interpretation. However, both instances merely relate to the limits on which states may utilize the provision and have absolutely no bearing on which standards eligible states may adopt.

Third, even if Section 177 only allowed states to adopt standards aimed at reducing criteria pollution, California’s greenhouse gas standards do just that. Over the years, California has frequently described how greenhouse gas standards help to control ozone and particulate matter pollution. Likewise, EPA has repeatedly recognized that greenhouse gas standards should be viewed as a strategy to control criteria pollutants to address nonattainment.

For these reasons, EPA should promptly rescind the unlawful determination in SAFE 1 that states cannot use Section 177 to adopt California’s greenhouse gas standards.

Thank you for the opportunity to testify today.