



Institute for  
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NEW YORK UNIVERSITY SCHOOL OF LAW

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## **EPA LACKS LEGAL AUTHORITY TO REVOKE CALIFORNIA’S 2013 WAIVER ON VEHICLE EMISSIONS STANDARDS**

*New report finds no legal basis for unprecedented revocation of California’s waiver to set its own pollution standards for cars and trucks*

The EPA seems poised to revoke, for the first time in the history of the Clean Air Act, a waiver allowing California to set its own air pollution standards for newly manufactured motor vehicles. A [new report by the Institute for Policy Integrity at New York University School of Law](#) concludes that EPA lacks legal authority for this unprecedented action.

While the Clean Air Act preempts all other states from setting their own vehicle emission standards, California can request a waiver to do so if it determines that its standards are at least as protective of public health and welfare as federal standards issued by EPA. California has enjoyed this unique authority for 50 years, and once a waiver is granted, other states can adopt California’s more stringent vehicle emissions standards as their own. Since the waiver provision was enacted in 1967, EPA has granted more than 50 waivers for California, fully denied only one (a decision it subsequently reversed), and revoked zero.

Recent reports suggest that EPA will soon attempt to withdraw the waiver California received in 2013 to set its own greenhouse gas emission standards, in conjunction with a weakening of federal greenhouse gas emission standards for vehicles in model years 2021 through 2026.

Because a waiver withdrawal would be entirely unprecedented, neither courts nor legal scholars have previously had cause to discuss the circumstances, if any, under which a waiver might permissibly be withdrawn.

The new report analyzes whether EPA possesses revocation authority and, assuming it exists at all, when and how such authority may be exercised. The extensive analysis concludes that the Clean Air Act neither expressly nor implicitly confers authority to revoke a waiver and that EPA cannot invoke inherent authority to do so. The authors further conclude that, even if EPA *were* found to have revocation authority, revocation would be permissible only when an increase in the stringency of federal emission standards rendered California’s standards comparatively less protective of public health and welfare (here, EPA is expected to propose a *weakening* of federal greenhouse gas standards). Accordingly, even assuming that EPA can revoke a California waiver under some circumstances, it has no legal grounds for doing so here.

This Interim Report analyzes information that is publicly available as of August 1, 2018. Assuming that the EPA does eventually propose a revocation of California’s 2013 waiver, the report will be updated and expanded to address the agency’s justifications for that proposed withdrawal.

The report, [\*No Turning Back: An Analysis of EPA's Authority to Withdraw California's Preemption Waiver Under Section 209 of the Clean Air Act\*](#), was authored by Denise Grab, Jayni Hein, Jack Lienke, and Richard Revesz of the Institute for Policy Integrity at New York University School of Law.

The authors are available for interviews to discuss the report and related policy issues.

The report is available at: [http://policyintegrity.org/files/publications/No\\_Turning\\_Back.pdf](http://policyintegrity.org/files/publications/No_Turning_Back.pdf)

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*[\*\*The Institute for Policy Integrity\*\*](#) at New York University School of Law is a non-partisan think tank dedicated to improving the quality of government decisionmaking. The institute produces original scholarly research in the fields of economics, law, and regulatory policy; and advocates for reform before courts, legislatures, and executive agencies.*