

# Congress of the United States

Washington, DC 20515

April 1, 2025

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
441 G. Street N.W.  
Washington, DC 20548

Dear Mr. Dodaro:

The Committee on Oversight and Government Reform and the Committee on Energy and Commerce are reviewing the decision of the Government Accountability Office (GAO) to publish observations on the Environmental Protection Agency's (EPA) submission of Clean Air Act (CAA) waivers as rules under the Congressional Review Act (CRA).<sup>1</sup> GAO's decision to publish observations in this matter is inconsistent with its own plain language description of its role in monitoring "agency compliance" with obligations to "submit major and non-major rules to Congress and GAO."<sup>2</sup> In passing the CRA, Congress intended for GAO to help safeguard congressional authority through published observations on agency attempts to side-step CRA requirements. GAO's decision to adversely opine on an agency's efforts to comply with the CRA is a distortion of its role and could make agencies less likely to follow the intent of this important statute in the future.

In 2022, California passed a law banning the sale of new gas-powered vehicles and imposing an electric vehicle mandate by 2035.<sup>3</sup> California sought a waiver from federal pollution standards under the CAA, which required EPA's approval.<sup>4</sup> On December 26, 2023, the Biden EPA began reviewing California's request.<sup>5</sup> One year later, and less than a month before President Trump assumed office, the Biden EPA approved the state's regulations.<sup>6</sup> Notably, in its final days, the Biden EPA took no action to submit the California CAA waivers to Congress.<sup>7</sup>

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<sup>1</sup> Government Accountability Office, *Observations Regarding the Environmental Protection Agency's Submission of Notices of Decision on Clean Air Act Preemption Waivers as Rules under the Congressional Review Act*, B-337179 (Mar. 6, 2025).

<sup>2</sup> Government Accountability Office, *Congressional Review Act, Legal Decisions*, available at <https://www.gao.gov/legal/congressional-review-act/legal-decisions> (last visited Mar. 27, 2025).

<sup>3</sup> Laura Klivans, A. Martinez, *Biden Administration approves California plans to ban sale of gas-only vehicles*, NPR (Dec. 19, 2024).

<sup>4</sup> Environmental Protection Agency, Press Release, *EPA Grants Waiver for California's Advanced Clean Cars II Regulations* (Dec. 18, 2024).

<sup>5</sup> Environmental Protection Agency, *California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Decision Document*, (Dec. 18, 2024).

<sup>6</sup> Laura Klivans, A. Martinez, *Biden Administration approves California plans to ban sale of gas-only vehicles*, NPR (Dec. 19, 2024).

<sup>7</sup> See Lee Zeldin (@epaleezeldin), X, (Feb. 13, 2025, 7:51 PM), available at <https://x.com/epaleezeldin/status/1890564615752315183>.

On February 14, 2025, the Trump EPA reversed this decision and determined the California CAA waivers should be treated as rules, thus unambiguously qualifying the waivers for the CRA process.<sup>8</sup> Had new EPA leadership not reached this conclusion, GAO might well have had a role in determining whether or not the Biden EPA decision complied with obligations under the CRA. However, the action by the Executive Branch to classify the decision as a rule should have nullified the possibility of GAO's intervention. Instead, and pursuant to a request by three members of the Senate minority, GAO issued a highly unusual adverse declaration after only a matter of weeks. The speed of GAO's conclusion raises further questions about ideological bias as GAO has typically taken more than three months to study far more conventional questions of CRA compliance.<sup>9</sup>

Historically, Congress has sought GAO's opinion when an agency did not send a regulatory action to Congress for review.<sup>10</sup> In these cases, GAO's determination that an action met the legal definition of a rule facilitated Congress' use of the CRA process.<sup>11</sup> In this case, GAO arguing that Congress cannot use the CRA to repeal the waivers goes well beyond GAO's advisory role and raises questions about the process, motivations of those involved in the decision, and the institutional understanding of GAO's role in the CRA process. Longstanding precedent exists that when an agency submits an action to Congress, it is treated as a rule and eligible for the CRA process.<sup>12</sup> GAO's recently submitted observations even affirmed: "GAO does not issue formal decisions on actions that agencies have submitted to Congress as rules under the CRA because that submission generally obviates the need for a GAO decision on the matter."<sup>13</sup> In light of these circumstances, the Committees seek GAO's cooperation in its review of this matter.

In order to examine GAO's commitment to its non-partisan mission, we request the following documents and information, covering the time period of November 5, 2024 to present, no later than April 15, 2025:

1. A copy of the February 21, 2025 Request Letter from Senators Whitehouse, Padilla, and Schiff to the Comptroller General;
2. All documents and communications between and among GAO regarding the March 6, 2025 *Observations Regarding the Environmental Protection Agency's Submission of Notices of Decision on Clean Air Act Preemption Waivers as Rules Under the Congressional Review Act*, including but not limited to all drafts, internal emails, decision memos, and correspondence; and

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<sup>8</sup> Environmental Protection Agency, Press Release, *Trump EPA to Transmit California Waivers to Congress in Accordance with Statutory Reporting Requirements* (Feb. 14, 2025).

<sup>9</sup> See Government Accountability Office, *Requests to GAO: Process and Timing*, available at [gao.gov/assets/2019/Requests-to-GAO-Process-and-Timing.pdf](https://gao.gov/assets/2019/Requests-to-GAO-Process-and-Timing.pdf).

<sup>10</sup> Valerie C. Brannon, Maeve P. Carey, CONG. RESEARCH SERV., R45248, THE CONGRESSIONAL REVIEW ACT: DETERMINING WHICH "RULES" MUST BE SUBMITTED TO CONGRESS, 1 (last updated Oct. 22, 2024).

<sup>11</sup> *Id.*

<sup>12</sup> See Government Accountability Office, *Internal Revenue Service: Applicability of the Congressional Review Act to Revenue Procedure 2018-38* (Nov. 30, 2018).

<sup>13</sup> *Supra*, n.2.

The Honorable Gene Dodaro

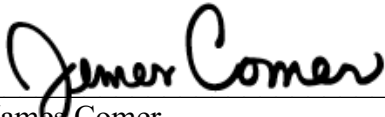
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3. All internal email correspondence discussing California CAA waivers or EPA's approval thereof.

To make arrangements to deliver documents or to ask any related follow-up questions, please contact the Committee on Oversight and Government Reform Majority staff at (202) 225-5074. The Committee on Oversight and Government Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X, and the Committee on Energy and Commerce has the authority to conduct oversight over "interstate and foreign commerce generally" and "conservation of energy resources" under House Rule X. Thank you for your attention to this important matter.

Sincerely,



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James Comer  
Chairman  
Committee on Oversight and  
Government Reform



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Brett Guthrie  
Chairman  
Committee on Energy and Commerce

cc: The Honorable Gerald Connolly, Ranking Member  
Committee on Oversight and Government Reform

The Honorable Frank Pallone, Ranking Member  
Committee on Energy and Commerce