EPA's Notice of Decision Regarding California's ACC II Waiver is a Rule Subject to the Congressional Review Act

February 2025

Background

On January 6, 2025, in the waning days of the Biden Administration, the Environmental Protection Agency ("EPA") issued a notice of decision granting a Clean Air Act ("CAA") Section 209 waiver for California's Advanced Clean Cars II ("ACC II") regulations for light-duty vehicles.[1] California's ACC II regulations impose an electric vehicle ("EV") mandate, requiring all new passenger cars, trucks and SUVs sold in California to produce zero emissions by 2035.

The Congressional Review Act ("CRA") enables Congress to enact joint resolutions invalidating new "rules" adopted by agencies. 5 U.S.C. §§ 801–808. EPA has characterized its waiver of CAA preemption for California's unprecedented ACC II program as an adjudicative order, not a rule, thus purportedly immunizing this decision from the CRA process. But given its sweeping nationwide consequences, massive economic impact, and clear zero-emission vehicle mandate, EPA's decision to grant California a preemption waiver for ACC II is a rule subject to the CRA process. *See* 5 U.S.C. § 551(4); 5 U.S.C. § 804(3). To support the CRA process, a member of Congress or a committee should request that the Government Accountability Office ("GAO") issue a decision that EPA's ACC II waiver decision is a rule subject to the CRA.

I. Defining Rules under the Congressional Review Act

The CRA enables Congress to enact joint resolutions invalidating new rules adopted by agencies. 5 U.S.C. §§ 801–808. Starting from the later of the date an agency publishes a rule in the Federal Register or submits that rule to Congress, Congress has sixty days to introduce a joint resolution disapproving the rule, excluding days either chamber is adjourned for more than three days during session. *Id.* § 802(a). If a disapproval resolution is enacted, the rule has no force or effect. *Id.* § 801(b)(1). And the rule cannot "be reissued in substantially the same form" unless authorized later by law. *Id.* § 801(b)(2).

a. Statutory Definitions of a Rule

The CRA adopts most of the definition of "rule" from the Administrative Procedure Act ("APA"), *id.* § 804(3), which states that a rule is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy…." *Id.* § 551(4). However, the CRA excludes rules of particular applicability from its definition of "rule." *Id.* § 804(3).

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[1] California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision, 90 Fed. Reg. 642 (Jan. 6, 2025).

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The APA also separately defines an order to be "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter *other* than rule making but including licensing." *Id.* § 551(6) (emphasis added). Rules and orders are mutually exclusive categories under the APA, and an order is not a rule subject to the CRA. But the definition of "order" is plainly a catch all category designed to capture any action that does not fall under the APA's definition of a rule, including "licensing."

b. Federal Courts and Rules and Orders

Courts have stated that rules of general applicability tend to impact many individuals or stakeholders, are prospective in nature, and are designed to prescribe a policy in enforcing a statute. *See, e.g., Nat'l Ass'n of Home Builders v. U.S. Army Corps of Eng'rs*, 417 F.3d 1272, 1285 (D.C. Cir. 2005) (holding that a nationwide dredge and fill permit is a rule rather than an adjudication because these permits "grant rights, impose obligations, or produce other significant effects on private interests"); *Sugar Cane Growers Coop. of Fla. v. Veneman*, 289 F.3d 89, 96 (D.C. Cir. 2002) (holding that a program imposed on multiple participants in future years was a rule); *United States v. Florida East Coast Railway Co.*, 410 U.S. 224, 246 (1973).

Conversely, courts have held that an order is a case-specific, individual determination made in "highly fact-specific contexts" that has an immediate effect on the individual or individuals involved. *Neustar, Inc. v. FCC*, 857 F.3d 886, 893 (D.C. Cir.); *see also Florida East Coast Railway Co.*, 410 U.S. at 246; *Yesler Terrace Community Council v. Cisneros*, 37 F.3d 442, 448 (9th Cir. 1994) ("adjudications resolve disputes among specific individuals in specific cases, whereas rulemaking affects the rights of broad classes of unspecified individuals").

Rules of particular applicability, another category altogether, are rules addressed to specific, identified entities. *American Broadcasting Co., Inc. v. FCC*, 682 F.2d 25, 31–32 (2d. Cir. 1982) (explaining that, ". . . [a] rule is one of particular applicability if it is addressed to and served upon named persons."). In *American Broadcasting*, the Second Circuit relied on the APA's legislative history to explain that a rule of particular applicability is a rule that is served upon a named person rather than being published in the Federal Register. 682 F.2d at 31–32. In other words, rules of particular applicability were added to the APA definition of "rule" to avoid filling the Federal Register with a mass of particularized rule making, such as rate setting, that do not "directly affect[] pre-existing legal rights or obligations."[2] *Id* (quoting *Appalachian Power Co. v. Train*, 566 F.2d 451, 455 (4th Cir. 1977) (internal quotations removed)).

EPA's ACC II waiver decision is a rule of general applicability and therefore subject to the CRA. The waiver decision will have sweeping nationwide consequences, increase the price

[2] For instance, the legislative history highlights Internal Revenue Service (IRS) private letters as examples. *See* 142 Cong. Rec. S3683-01, S3687 (daily ed. April 18, 1996) ("IRS private letter rulings . . . are classic examples of rules of particular applicability . . ."). IRS issues private letter rulings to taxpayers who request a specific ruling on the facts of their situation. *Id.*

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of cars, reduce consumer choice, and is intended to set the country on a path towards driving exclusively electric vehicles. A policy decision of such magnitude could not fall under the APA's definition of an order, license, or rule of particular applicability that is exempt from the CRA.

II. Agency Positions on Waiver Decisions as Rules

a. EPA

Likely in an effort to insulate its decision from review by this Administration, the Biden EPA did not submit a CRA report to Congress or the Comptroller General for its ACC II waiver decision. It noted in the Federal Register publication that the CRA "does not apply because this action is not a rule."[3] This is in line with Democrat Administrations' posture on waiver decisions and the CRA. For instance, in reinstating CARB's waiver for its Advanced Clean Cars I (ACC I) regulations, the Biden EPA also took the position that its decision reinstating California's waiver (after it was revoked by the first Trump Administration) is not a rule not subject to the CRA.[4]

b. GAO

In response to an inquiry from the Senate about the availability of CRA review for a Section 209 waiver decision, the GAO under President Biden also took the position that EPA's 2022 decision to reconsider its previous withdrawal of the ACC I waiver was an order rather than a rule.[5]

Relying in part on arguments that the Biden EPA submitted to GAO, the agency argued that the waiver decision was a "case-specific, individual determination of a set of facts with an immediate effect on the individual(s) involved" because it was particular to California and the ACC I regulations rather than a "broad unspecific group," and it had an immediate effect in California. *Id.* at 5. It was also a "final disposition" and "form of permission." *Id.* As such, the GAO found that the waiver decision fit the APA's definition of an "order," *see* 5 U.S.C. § 551(6), rather than a rule.

GAO further asserted that, even if the waiver decision satisfied the APA definition of a rule, it would be exempt from the CRA as a rule of particular applicability because the waiver

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[3] California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision, 90 Fed. Reg. 642 (Jan. 6, 2025).

[4] California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision, 87 Fed. Reg. 14,332, 14,379 (Mar. 14, 2022).

[5] *See* U.S. Gov't Accountability Office, B-334309, Applicability of the Congressional Review Act to Notice of Decision on Clean Air Act Waiver of Preemption (2023) at https://www.gao.gov/assets/870/863746.pdf.

"concern[ed] a specific entity—California—and addresse[d] a statutory waiver specific to California's [ACC I] Program."[6] GAO relied on one of its prior decisions to form this conclusion, which itself pointed to a 2019 GAO decision that analyzed what constitutes a rule of particular applicability.[7] In its 2019 decision, GAO relied heavily on *American Broadcasting* to argue that rules of particular applicability are addressed to named entities and address actions they may or may not take.[8] However, GAO ignored a critical element described by the Second Circuit in *American Broadcasting*: rules of particular applicability were created to avoid filling the Federal Register with a mass of rulemakings that do not affect legal rights or obligations. 682 F.2d at 31–32.

III. EPA's ACC II Waiver Decision is a Rule Subject to the CRA

The Biden EPA improperly sought to insulate its ACC II waiver decision from review and recission by this Administration by incorrectly characterizing the decision as an order, not a rule. But this Administration has the opportunity to correct the record on this critical issue for the U.S. automotive industry and American consumers.

a. EPA's ACC II Waiver Decision has the Characteristics of a Rule

EPA's ACC II waiver decision has far more characteristics of a rule than an order or license. Although the waiver decision is formally addressed to California, it is not designed or intended to be particular to California, and its effect will be felt nationwide. The ACC II waiver decision will have a widespread effect on the industry, it is prospective in nature, and it is designed to dictate a nationwide policy agenda of mandating electric vehicles and limiting individual consumer choice to purchase gasoline-powered vehicles.

For instance, California's ACC II regulations are intentionally designed for widespread adoption beyond California to include multiple states pursuant to Section 177 of the CAA ("Section 177 states"). As an example, the regulations include provisions for pooling zero-emission vehicles ("ZEV") sales across the States that adopt the ZEV regulations. Cal. Code

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[6] *See also* CONG. RSCH. SERV., R48168, CALIFORNIA AND THE CLEAN AIR ACT (CAA) WAIVER: FREQUENTLY ASKED QUESTIONS (2024) at https://crsreports.congress.gov/product/pdf/R/R48168. In a report, the Congressional Research Service (CRS) adopted GAO and EPA's view that a waiver decision is an order, not a rule, citing the same reasons. But CRS reports are not binding; the governing statute does not confer any legal authority on CRS reports. *See* 2 U.S.C. § 166 et seq.

[7] *See* U.S. Gov't Accountability Office, B-334995, U.S. Food and Drug Administration—Applicability of the Congressional Review Act to Risk Evaluation and Mitigation Strategy (REMS) Single Shared System for Mifepristone 200 mg (2023) at https://www.gao.gov/products/b-334995 (citing U.S. Gov't Accountability Office, B-330843, Board of Governors of the Federal Reserve System—Applicability of the Congressional Review Act to Supervision and Regulation Letters (2019) at https://www.gao.gov/products/b-330843).

[8] *See* U.S. Gov't Accountability Office, B-330843 (citing American Broadcasting, 682 F.2d at 31–32).

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Regs., tit. 13, § 1962.4(g)(1)(D). Thus, by design, the ACC II regulations do not "concern [only] a specific entity—California," as GAO stated in its earlier opinion.

The ACC II regulations will also have a massive market impact. California and the other Section 177 states are expected to account for approximately 40% of new light-duty vehicle registrations, meaning numerous manufacturers, purchasers, and other stakeholders will be impacted.[9] CARB's economic analysis estimates that compliance with ACC II will cost $210 billion through MY 2040 in California alone.[10] There are also sweeping energy security implications, as the rapid increase in electrification may strain mineral supply chains and impact energy security on a national level.

The view that the waiver decisions are orders is inconsistent with the importance attached to the ACC II regulations by CARB itself. For instance, CARB asserts that the regulations will reduce greenhouse gas emissions by 395.1 million metric tons over 14 years, with avoided climate impacts between $9.8 and $40.1 billion.[11] CARB chair Liane Randolph stated that the ACC II regulations represented "a historic moment for California, for [its] partner states, and for the world as [it] set forth this path towards a zero-emission future."[12]

Further, if EPA attempted an action with the same contours and magnitude of ACC II, it would undoubtedly be considered a rule. EPA's approval of a state agency rule having the same effect should not evade CRA review as an order.

Under the CAA, emission control measures taken by states or localities that are necessary to attain federal air quality standards must be included in the State Implementation Plan (SIP) submitted to EPA. *See Committee for a Better Arvin v. EPA*, 786 F.3d 1169 (9th Cir. 2015). The Ninth Circuit has specifically held that this includes measures for which California has an EPA waiver of preemption. *Id.* Accordingly, since 2015, CARB has submitted rules for which it has received an EPA waiver decision for federal approval as part of the SIP.[13] Air emissions rules included in the SIP become EPA rules by virtue of EPA's approval of the SIP. *See Cal. Dump Truck Owners Assoc. v. Nichols*, 784 F.3d 500, 506-07 (9th Cir. 2015). Therefore, regardless of what EPA labels its waiver decision, CARB mobile source rules become federal rules when included in an EPA-approved SIP. *See id.*

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[9] "Section 177 States Regulation Dashboard," https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/states-have-adopted-californias-vehicle-regulations.

[10] *See* CARB Advanced Clean Cars II Final Statement of Reasons, Appendix F: Updated Costs and Benefits Analysis, at https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/accii/fsorappf.pdf.

[11] *See* CARB ACC II Waiver Request Support Document found at EPA-HQ-OAR-2023-0292.

[12] *See* CARB Transcript 8-25-202 found at EPA-HQ-OAR-2023-0292.

[13] *See, e.g.*, Air Plan Revisions; California; California Mobile Source Regulations, 89 Fed. Reg 103,726, 103,727 (Dec. 19, 2024).

Finally, CARB standards must follow the limits of EPA's own authority. Section 202(a) of the CAA describes EPA's authority when promulgating emission standards applicable to new motor vehicles. 42 U.S.C. § 7521(a)(1). This provision is incorporated by reference into the waiver requirements of Section 209(b). *Id.* § 7543(b)(1). In other words, EPA shall only grant a waiver for California's "standards and accompanying enforcement procedures" if those standards and procedures are "consistent with" the limits on authority that would apply if EPA were to promulgate the same rules itself. The scope of EPA's authority is limited by the CRA. Thus, EPA's power to grant a waiver is constrained by the CRA and EPA cannot evade that Congressional limit by describing the waiver decision as an order.

The ACC II waiver decision is also not a rule of particular applicability. In reaching its conclusion about the ACC I waiver decision being a rule of particular applicability, GAO relied on *American Broadcasting*'s statement that a "rule is one of particular applicability if it is addressed to and served upon named persons." *American Broadcasting*, 682 F.2d at 31–32. But GAO misread this case and depended on a contorted argument that, because the waiver decision formally concerns only California, it meets this definition. *See* U.S. Gov't Accountability Office, B-334309 at 6. But as discussed above, *American Broadcasting* also explains that rules of particular applicability were added to the APA definition of "rule" to avoid filling the Federal Register with a mass of particularized rule making, such as rate setting, that do not impact pre-existing legal rights or obligations. 682 F.2d at 31–32. EPA waiver decisions plainly do not fall under this definition. Waiver decisions are published in the Federal Register, are open for public comment, and impact the legal rights of numerous entities.

b. EPA's ACC II Waiver Decision is Unique and Unprecedented

Supporters of California's sweeping ACC II program may seek to rely upon the historical treatment of waiver requests as adjudications, and not rules, in arguing that the decision to grant California's ACC II waiver is immune from CRA review. Setting aside whether those prior waiver determinations were properly classified as adjudications—and they were not—California's ACC II program is so unique and so unprecedented in its breadth, scope, and effect that it must be evaluated on its own merits for CRA purposes. And when the waiver is viewed in light of the fundamental nationwide shift in emission regulation that California seeks to implement through ACC II, it is manifestly clear that the ACC II waiver decision is *sui generis* and cannot be treated as equivalent to prior waiver decisions, including for purposes of review under the CRA.

When EPA first authorized California to set its own emission standards upon a showing of "compelling and extraordinary conditions,"[14] California's program was exactly that—a California-only phenomenon. While states possessed the ability to adopt California's program via Section 177 of the CAA, few actually did so. As such, for decades, decisions granting

[14] *See* 42 U.S.C. § 7543(b)(1)(B).

California's waivers accomplished nothing more than allowing California to set its *own in-state* emission standards to address its *own in-state* emission problems. For more than twenty years, any waiver that was granted to California was effectively a California-only issue, and did not carry with it a nationwide impact on industry or consumers. As a result, there was little or no reason for Congress or industry to scrutinize whether waivers were properly characterized as rules or adjudications, including for purposes of the CRA.

Beginning in the early 2000s, more states began to adopt California's programs.[15] But even then, California's programs were modest in their requirements—for example, allowing hybrid vehicles to count toward the ZEV requirements. This meant that any impact from California's standards (or the adoption thereof by a Section 177 state) was limited and any potential national cost or impact was minimized—even though the California program was now effective in states outside of California.

It was not until California's adoption of its ACC I program in 2012 that the scope and stringency of California's programs ramped up, drastically increasing the nationwide costs and consequences of the decision to grant California a CAA waiver. This dramatic shift in the breadth, scope, and effect of California's tighter standards was coupled with a contemporaneous increase in the number of states that were adopting California's programs through Section 177. And this sweeping impact—touching more than 40% of the U.S. vehicle market—is even more acute with the advent of the ZEV mandate and stricter standards imposed by ACC II.

In other words, the notion that California waiver determinations have a nationwide impact and scope is a very recent phenomenon—and are not reflective, as some would argue, of a fifty-year-old tradition of allowing California to dictate emission policy on a national scale. Reliance upon the treatment of prior waiver determinations is not determinative of how the ACC II waiver should be treated, including for purposes of the CRA process. Rather, what matters is the unprecedented and pervasive effect of California's ACC II regulations on the nation, on the entire automotive industry, and on the U.S. consumer.

c. GAO's ACC I Waiver Decision is not Controlling

For similar reasons, GAO should issue a decision finding that EPA's ACC II waiver decision is a rule subject to the CRA, and it does not need to be concerned about its precedent designating the ACC I waiver decision as an order.

[15] *See* CARB, States That Have Adopted California's Vehicle Regulations, at https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/states-have-adopted-californias-vehicle-regulations.

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Although GAO gives precedential weight to its prior legal decisions, the agency may modify or reverse a prior decision if it rests upon an error of fact or law, or if GAO becomes aware of relevant information that would have caused it to resolve the matter differently.[16]

GAO should reverse its 2023 decision finding that EPA's ACC I waiver decision was an order because it overlooked extensive legal and factual evidence about the waiver decision. Some of the rule characteristics described above apply equally to the ACC I waiver decision, including the large market impact and the intent for nationwide adoption, and this information was disregarded by GAO.

But if GAO chooses not to reverse its erroneous 2023 decision regarding the ACC I waiver decision, it can easily distinguish between the two waiver decisions. California's ACC II regulations are even more divergent from the national rules than the ACC I regulations, and they are significantly more stringent. The ACC II regulations will impact the entire industry and are intended to transition California and the Section 177 states to electric vehicles, increasing car prices and limiting consumer choice, while the ACC I regulations were designed to be harmonized with federal rules.

For instance, the ACC I regulations included a continuation of CARB's Low Emission-Vehicle ("LEV") rules which included increasingly more stringent standards for criteria pollutants and greenhouse gas ("GHG") emissions.[17] But these regulations were issued with a commitment to be part of a "continued national program" with EPA and the National Highway Traffic Safety Administration ("NHTSA").[18] CARB agreed that it would not contest the federal agencies' CAFE and GHG standards, and that compliance with the federal standards through MY 2025 would be "deemed compliance with the California GHG emissions standards." *Id.*

Therefore, it was possible for an automaker to comply with the ACC I emissions standards by following the federal rules. It did not matter as much if the ACC I waiver decision was an adjudication or a rule because an automaker could simply follow the federal rules. CARB's ACC II emission standards, on the other hand, are more stringent than the federal rules. They phase out the ability of automakers to include ZEVs in their LEV fleet calculation of the

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[16] *See* U.S. Gov't Accountability Office, 24-107329, Protocols for Decisions and Opinions (2024) at https://www.gao.gov/assets/870/865936.pdf.

[17] *See* CARB, Low-Emission Vehicle (LEV III) Program at https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/lev-program/low-emission-vehicle-lev-iii-program.

[18] *See* Letter from Mary D. Michols, Chairman of CARB, to Ray LaHood, Secretary of the U.S. Department of Transportation, and Lisa Jackson, Administrator of EPA (July 28, 2011) at https://www.epa.gov/sites/default/files/2016-10/documents/carb-commitment-ltr.pdf.

combined NMOG and NOx fleet average requirement by MY 2029.[19] They also include the introduction of high altitude NMOG and NOx limits and the introduction of fleet standards for medium-duty vehicles. *Id.*

Further, ACC II's ZEV program is significantly more stringent than its predecessor program. The ACC I regulations included a ZEV program that required automakers to produce for sale in California and the Section 177 states an increasing number of ZEVs, culminating in around 14% ZEV sales by MY 2017.[20] But ACC II requires a ramp-up from a 35% ZEV sales requirement in MY 2026 to a 100% ZEV sales requirement in MY 2035.[21] By pushing the ZEV sales requirement to 100%, if effectively means that automakers will no longer be able to purchase credits to meet their obligations because there will be no remaining credits left over. The 100% ZEV target in ACC II is materially different from the lower fleet mix target in ACC I. The ACC II regulations also place a variety of quality controls directly on ZEVs including battery durability and warranty requirements, as well as range calculation requirements. *Id.*

As mentioned, California intends for the ACC II regulations to set the country on a path towards zero tailpipe emissions, and EPA's decision to allow California to do so is materially different from its prior approval of CARB's ACC I regulations.[22]

Even though it should, GAO does not need to reverse its 2023 decision on the ACC I waiver decision to find that the ACC II waiver decision is a rule. The two waiver decisions are distinguishable, and GAO can find that EPA's ACC II waiver decision is a rule without disturbing its decision on the ACC I waiver.

IV. Recharacterizing the Waiver Decision will have Spillover Benefits and Minimal Spillover Risks

Even if a member introduces a joint resolution disapproving the ACC II waiver decision but it ultimately fails to pass, any characterization of the waiver decision as a rule will benefit the U.S. automotive industry and American consumers. In various enforcement alerts, statements in waiver proceedings, and rules, CARB has taken the indefensible position that it

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[19] *See* CARB, Final Regulation Order for Section 1961.4 Exhaust Emission Standards and Test Procedures - 2026 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles at https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/accii/2acciifro1961.4.pdf.

[20] CARB, Final Regulation Order: Amend section 1962.1, Title 13, California Code of Regulations ~ Zero-Emission Vehicle Standards for 2009 through 2017 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles at http://www.arb.ca.gov/regact/2012/zev2012/fro1rev.pdf.

[21] CARB, Final Regulation Order for Section 1962.4 Zero-Emission Vehicle Standards for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks at https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/accii/2acciifro1962.4.pdf.

[22] *See* CARB Transcript 8-25-202 found at EPA-HQ-OAR-2023-0292.

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will retroactively enforce its emissions regulations. With no coherent explanation of its legal authority for retroactive enforcement, CARB has argued that it will enforce back to the state law effective date when it receives a waiver from EPA, including for periods where the model year has passed. If the ACC II waiver is restored by a future Democratic administration, manufacturers may face the situation where California alleges the waiver revocation was improper, its ACC II regulations were still valid, and that it can retroactively enforce the ACC II regulations following the restoration.

Characterizing the ACC II waiver decision as a rule would mitigate CARB's ability to retroactively enforce the ACC II regulations. The federal courts have made it clear that to protect industry's due process guarantees under the Fourteenth Amendment, in the absence of authority for retroactive application, rulemaking should be forward-looking. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208-09 (1988). This will make it more difficult for CARB to distinguish any retroactive enforcement from the due process case law on the basis that the waiver decision is not a rule.

Designating waiver decisions as rules is unlikely to spillover to other of EPA's state-specific determinations and adjudications, such as water quality standards. Unlike the other state-specific determinations, Sections 209 and 177 of the CAA contemplate that other states will need to adopt CARB's emissions regulations in identical format. *See* 43 U.S.C. § 7507(1) (states may adopt the CARB standards if "such standards are identical to the California standards"). That requirement is unique to this program, and unlike other state-specific EPA determinations, it shows a clear intent to implement California's emissions policies beyond the state.

Path Forward

EPA should submit a report to Congress including the ACC II waiver decision as a rule subject to the CRA. *See* 5 U.S.C. § 802(a). And Congress should move a joint resolution through the CRA process quickly.[23] In addition, a member or committee should send a request, in writing, to the Comptroller General asking it to issue an opinion finding that EPA's ACC II waiver decision is a rule subject to the CRA.

[23] After introduction, the joint resolution goes to the appropriate House or Senate committee. 5 U.S.C. § 802(b). The House follows its usual legislative course, but the Senate may use various fast-track procedures, requiring little Senate floor time. *Id.* § 802(c). Once either the House or Senate passes a joint resolution, it is transmitted directly to the floor of the other chamber. *Id.* § 802(f).

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