ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

UNION OF CONCERNED SCIENTISTS, et al., Petitioners, v. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, et al., Respondents.	No. 19-1230, and consolidated cases

FEDERAL RESPONDENTS' MOTION TO EXPEDITE

The federal action challenged by these petitioners assures that automobile manufacturers will only need to meet a single, national set of fuel economy and related greenhouse gas emission standards. By contrast, Petitioner State of California is trying to force manufacturers to accept state greenhouse gas emission standards that it sets. Further, California is acting to reward companies who support the State's assertion of regulatory authority and to punish companies that do not. These are extraordinary cases. The standards in question are immediately impacting industry investment and production decisions in the multibillion-dollar automotive sector of the U.S. economy. This, in turn, will affect the price, safety, availability, and emissions

of light cars and trucks purchased across America. The costly uncertainty these challenges are generating should be expeditiously resolved by a decision of this court – one way or the other. So Federal Respondents the National Highway Traffic Safety Administration ("NHTSA"); James Owens, Acting NHTSA Administrator; the United States Environmental Protection Agency ("EPA"); Andrew Wheeler, EPA Administrator; the United States Department of Transportation ("DOT"); and Elaine L. Chao, Secretary of Transportation, respectfully request that the Court expedite this matter by entering the schedule set forth below.

Courts shall expedite the consideration of any action for good cause shown. 28 U.S.C. § 1657(a). As further explained below, expedition is warranted here because this case affects the near-term decision-making of a significant sector of the economy, the automotive industry. Its plans for the design, production, and distribution of passenger cars and light trucks for model years 2021-2025 will be directly impacted by the outcome of this case. Those decisions will, in turn, affect the vehicles available to the public and sold in the 50 states. Automakers, states, and the public alike share an unusual and strongly compelling interest in the prompt disposition of these petitions. *See* D.C. Cir. Handbook at 33.

Federal Respondents have consulted with counsel for Petitioners. Petitioners in Case Nos. 19-1230, 19-1239, 19-1243, and 19-1246 state that they oppose this motion and intend to file an opposition. Petitioners in Case Nos. 19-1241, 19-1242, and 19-1245 state that they oppose this motion. Petitioner in Case No. 19-1249 did

not provide a response. Federal Respondents have also consulted with counsel for Respondent-Intervenors and Movant Respondent-Intervenors, who represent that they support the relief and schedule requested in this motion.

Petitioners challenge a joint final action taken by NHTSA and EPA titled, "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program" (the "One National Program Action"). 84 Fed. Reg. 51,310 (September 27, 2019). The One National Program Action finalized two interrelated NHTSA and EPA actions concerning the nationwide uniformity of regulations affecting fuel economy standards for passenger cars and light trucks.

First, NHTSA promulgated regulations under the Energy Policy and Conservation Act, 49 U.S.C. §§ 32901-903, clarifying that federal law preempts state regulation of tailpipe greenhouse gas emissions from automobiles. 84 Fed Reg. at 51,361-63. As NHTSA explained, the regulations were "necessary to maintain the integrity of the corporate average fuel economy program and compliance regime established by Congress as a nationwide program." 84 Fed. Reg. at 51,311. NHTSA's regulations ensure that its carefully calibrated fuel economy standards cannot be circumvented by even one state running a different system relating to fuel economy regulation.

Second, the One National Program Action finalized EPA's withdrawal of aspects of a 2013 Clean Air Act preemption waiver that it had previously granted to the State of California under Clean Air Act Section 209(b), 42 U.S.C. § 7543(b). *See*

84 Fed. Reg. at 51,328. EPA withdrew aspects of the waiver applicable to the portions of California's "Advanced Clean Cars Program" that include the State's tailpipe greenhouse gas emission standards and Zero Emission Vehicles mandate. EPA's decision was based both on the preemptive effect of the Energy Policy and Conservation Act, *see* 84 Fed. Reg. at 51,337-38, and on EPA's separate determination that California "does not need such State standards to meet compelling and extraordinary conditions," as required by Clean Air Act section 209(b)(1)(B), *see* 42 U.S.C. 7543(b)(1)(B); 84 Fed. Reg. at 51,339-50.

The One National Program Action is one of two joint NHTSA-EPA actions that will ultimately comprise the SAFE Vehicles rulemaking. The second action will establish new uniform national fuel economy standards and consistent greenhouse gas standards for model years 2021-2026. That rulemaking proposal, 83 Fed. Reg. 42,986, was published on August 24, 2018, and final standards will be issued in the near future.[1]

Notwithstanding the new standards, however, the joint actions taken in the One National Program Action immediately impact automakers' obligations. Automakers are already planning and implementing vehicle production for model years 2021 to 2025. For those model years, California has set tailpipe greenhouse gas

[1] *See* National Highway Traffic Safety Administration, "The Safer Affordable Fuel-Efficient 'SAFE' Vehicles Rule," available at https://www.nhtsa.gov/corporate-average-fuel-economy/safe.

emission standards and Zero Emission Vehicle mandates to which EPA's now-withdrawn waiver applied.[2] And California has entered into special agreements with certain manufacturers – companies who agree not to contest California's regulatory authority in this and other cases – immediately allowing them lower, more flexible standards.[3]

Petitioners would require automakers to comply with distinct state standards not only in California, but also in the numerous other states that had previously opted into the California standard under Clean Air Act section 177, 42 U.S.C. § 7507. This means the so-called "California" standard really sets the standard for cars sold to more than one-third of Americans.[4] The One National Program Action ensures automakers are protected from varied state regulation of vehicle fuel economy – and truly subject to a single, nationwide fuel economy standard, as Congress intended.

The uncertainty around this question is already having impacts on automakers. They are making decisions about their upcoming fleets in the face of increasing pressure to adhere to California's preferred standards. Indeed, California recently announced further punitive measures against companies that are not supporting the

[2] NHTSA's rule is currently in effect and is not limited to particular model years.

[3] California Air Resources Board, "Terms for Light-Duty Greenhouse Gas Emissions Standards," available at: https://ww2.arb.ca.gov/sites/default/files/2019-07/Auto%20Terms%20Signed.pdf.

[4] California Air Resources Board, "States that have Adopted California's Vehicle Standards under Section 177 of the Federal Clean Air Act," available at: https://ww2.arb.ca.gov/sites/default/files/2019-03/177-states.pdf.

State in this and other cases. It is developing a policy to bar its State agencies from purchasing vehicles from manufacturers who do not "recognize [California's] authority to set greenhouse gas and zero emission vehicle standards"[5] – a direct attack on automakers who would abide by the lawfully promulgated One Federal Program Action.

The validity of NHTSA's regulations and EPA's waiver withdrawal is thus of central and immediate importance to the automotive sector's forward planning concerning the design, production, and state-by-state distribution of passenger cars and light trucks. This is no small concern. Corporate average fuel economy standards have billions of dollars of impacts on the economy. *See* Fed Reg. at 51,326; "NHTSA and EPA Proposed SAFE Vehicle Rule: Overview," EPA-420-F-18-904, August 2, 2018.[6] Expeditiously resolving these challenges will provide the automotive industry with greater certainty and security in making decisions for the impending 2021-2025 model years.[7] This will prevent industry disruptions – and resultant increases in

[5] California Department of General Services, "State Announces New Purchasing Policies to Reduce Greenhouse Gas Emissions from the State's Vehicle Fleet," November 15, 2019, available at: https://www.dgs.ca.gov/Press-Releases/Page-Content/News-List-Folder/State-Announces-New-Purchasing-Policies-to-Reduce-Greenhouse-Gas-Emissions.

[6] Available at: https://www.epa.gov/regulations-emissions-vehicles-and-engines/safer-affordable-fuel-efficient-safe-vehicles-proposed.

[7] Notably, the Energy Policy and Conservation Act requires that the Secretary of Transportation set fuel economy standards at least 18 months in advance of the applicable model year, 49 U.S.C. § 32902(a), in recognition of the lead time required by industry to meet these standards on average across the fleet.

planning and compliance costs – that have implications for the public's access to newer, affordable, safer, and more fuel-efficient vehicles.

Accordingly, NHTSA and EPA respectfully request that the Court expedite this case by entering the following schedule, which would allow for oral argument in the spring 2020 term:

February 10, 2020	Petitioners' opening brief(s)
March 11, 2020	Respondents' brief
March 18, 2020	Respondent-Intervenors' brief(s)
March 25, 2020	Petitioners' reply brief(s)
April 1, 2020	Deferred joint appendix
April 6, 2020	Final form briefs

The proposed schedule is feasible and consistent with the Court's December 2, 2019 order instructing that the agencies file the administrative record by January 9, 2020. It allows Petitioners and Respondents 30 days for the preparation of principal briefs, starting from the filing of the administrative record index on January 9th. This is only slightly faster than the standard length of briefing afforded by Federal Rule of Appellate Procedure 31(a)(1), which requires appellants to file their brief within 40 days after the record is filed and requires appellees to do so 30 days thereafter. *See* Fed. R. App. P. 31(a)(1). The proposed schedule then provides 14 days for preparation of Petitioners' reply brief or briefs. *Compare id.* (allowing 21 days for reply briefs).

A more extended schedule would delay resolution of the case considerably, as it would likely result in oral argument being postponed until the fall of 2020. An extended delay in resolving the case would leave automakers without much-needed clarity concerning the scope of their obligations for upcoming model years. That would unduly burden the automotive industry, whose interests here – given the industry's size and importance to the national economy – strongly compel expedited consideration.

For the reasons explained above, Federal Respondents respectfully request that the Court enter the above schedule, and that, following the completion of briefing, this case be scheduled for oral argument in the spring 2020 term.

DATED: December 18, 2019

Respectfully submitted,

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I hereby certify that this document complies with the word limit of Fed. R. App. P. 27(d)(2) and 32(c)(1), excluding the parts of the document exempted by Fed. R. App. P. 32(f), because this document contains 1572 words.

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/s/ Chloe H. Kolman
CHLOE H. KOLMAN

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2019, a copy of the foregoing Federal Respondents' Motion to Expedite was served electronically through the Court's CM/ECF system on all counsel of record.

/s/ Chloe H. Kolman
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