

August 16, 2019

**Via eFile**

Mark Langer  
Clerk of Court  
United States Court of Appeals for the  
District of Columbia Circuit  
333 Constitution Avenue, NW  
Washington, DC 20001

Re: *State of California, et al. v. EPA*, No. 18-1114 (L)

Dear Mr. Langer:

Pursuant to Federal Rule of Appellate Procedure 28(j) and Circuit Rule 28(f), Intervenor Alliance of Automobile Manufacturers and Association of Global Automakers, Inc., respond to Petitioners' August 7, 2019 letter. Petitioners cite a preamble published July 26, 2019, by the National Highway Traffic Safety Administration ("NHTSA"), *see* 84 Fed. Reg. 36,007 (July 26, 2019), which accompanies a rule adjusting the civil penalty rate for automobile manufacturers that fail to meet corporate average fuel economy standards.

Nothing in NHTSA's July 26 preamble supports Petitioners' argument that this Court has jurisdiction to review the April 13, 2018 Determination in which EPA announced its intention to reconsider greenhouse gas ("GHG") emissions standards adopted in 2012 for model years 2022-2025 light-duty vehicles, based on EPA's "determin[ation] that the current standards are based on outdated information" and "should be revised as appropriate." 83 Fed. Reg. 16,077, 16,077 (Apr. 13, 2018). EPA's April 2018 Determination is and remains non-final agency action.

Petitioners cite two references in NHTSA's July 26 preamble to EPA's April 2018 Determination. First, in a footnote, NHTSA makes the unremarkable point that "EPA cannot be held to its earlier forecast regarding choices available to consumers" of fuel-efficient vehicles under the 2012 standards, given EPA's 2018 determination that those standards "were 'based on outdated information.'" 84 Fed. Reg. at 36,025 n.198. Second, NHTSA observes that EPA's prior "conclusion" that the 2012 standards were technologically feasible at reasonable costs "is no longer operative" given EPA's 2018 decision to "initiate a notice and comment rulemaking in a forthcoming Federal Register notice." *Id.* at 36,027. Neither reference suggests that NHTSA believes EPA's April 2018 Determination is final action. If anything, they illustrate NHTSA's agreement with EPA that the April 2018 Determination merely announced EPA's intention to issue a notice of proposed rulemaking, which is classic non-final agency action. *See* Intervenor's Br. 19-25. Nor does the NHTSA preamble demonstrate that the non-final April 2018 Determination has had any "practical impact." Instead Petitioners identify, at most, only the kinds of generic impacts that are not relevant to a finality analysis. *See* Intervenor's Br. 27.

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Respectfully submitted,

s/Raymond B. Ludwiszewski (w/ consent)

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 16, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Paul D. Clement  
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