

**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

## STATUS REPORT

Pursuant to the Court’s February 8, 2011 Order, ECF No. 1884115,  
Respondents National Highway Traffic Safety Administration (“NHTSA”) and the  
United States Environmental Protection Agency (“EPA”), et al. (collectively  
“Federal Agencies”), submit the following status report.

1. These consolidated petitions challenge the “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program.” 84 Fed. Reg. 51,310 (the “One National Program Action”).

2. The One National Program Action, jointly issued by NHTSA and EPA on September 27, 2019, addresses the authority of California and other states to

regulate greenhouse gas emissions from light-duty motor vehicles. Specifically, NHTSA issued for the first time a set of “preemption” regulations, stating that statutory language in the Energy Policy and Conservation Act barring state laws and regulations “related to fuel economy standards,” 49 U.S.C. § 32919(a), preempts state and local tailpipe greenhouse gas emission standards and zero emission vehicle sales mandates for light-duty vehicles.

3. The One National Program Action also included EPA’s determination to withdraw those portions of the 2013 waiver issued pursuant to Clean Air Act Section 209, 42 U.S.C. § 7543(b), that had allowed California to adopt such greenhouse gas emission standards and zero emission vehicle sales mandates. EPA’s portion of the One National Program Action also put forward an interpretation of Clean Air Act Section 177, 42 U.S.C. § 7507, stating that this provision should be read to allow other states to adopt California’s vehicle standards for criteria pollutants, but not its vehicle standards for greenhouse gases. *See generally* 84 Fed. Reg. 51,310.

4. On February 8, 2021, the Court granted the Federal Agencies’ motion to hold these cases in abeyance pending the Federal Agencies’ implementation of an Executive Order directing the Federal Agencies to immediately review and potentially rescind or revise the One National Program Action.

5. On April 22, 2021, NHTSA's Acting Administrator signed a Notice of Proposed Rulemaking. In NHTSA's Notice, NHTSA proposed to repeal NHTSA's portions of the One National Program Action in which NHTSA codified regulatory text and made additional pronouncements regarding the preemption of state and local laws related to fuel economy standards. *See* [https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-04/cafe\\_preemption\\_nprm\\_04222021\\_1\\_0.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-04/cafe_preemption_nprm_04222021_1_0.pdf). The period for public comments on NHTSA's proposal closes 30 days after the date that NHTSA's Notice is published in the Federal Register.

6. On April 28, 2021, EPA published in the Federal Register a Notice of Opportunity for Public Hearing and Comment. 86 Fed. Reg. 22,421 (Apr. 28, 2021). In EPA's Notice, EPA announced that it is reconsidering the portions of the One National Program Action in which EPA withdrew a waiver of preemption for California's zero emission vehicle mandate and greenhouse gas emission standards within California's Advanced Clean Car program. *Id.* at 22,421/1-2. The Advanced Clean Car program waiver, as it pertains to the greenhouse gas emission standards and zero emission vehicle mandates, will become effective should EPA rescind its portions of the One National Program Action. *Id.* at 22,421/2. EPA also announced that it is taking comment on its interpretation of Clean Air Act Section

177. *Id.* at 22,428/3. The period for public comments on EPA's Notice closes on July 6, 2021. *Id.* at 22,421/3.

7. The next status report in these consolidated petitions is due on or about August 9, 2021.

DATED: May 10, 2021

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 538 words.

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/s/ Daniel R. Dertke

DANIEL R. DERTKE

**CERTIFICATE OF SERVICE**

I hereby certify that on May10, 2021, a copy of the foregoing Status Report was served electronically through the Court's CM/ECF system on all counsel of record.

/s/ Daniel R. Dertke

DANIEL R. DERTKE