

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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COMPETITIVE ENTERPRISE)	
INSTITUTE, et al.,)	
)	
Petitioners,)	
)	
v.)	No. 20-1145 (and
)	consolidated cases)
NATIONAL HIGHWAY TRAFFIC)	
SAFETY ADMINISTRATION, et al.,)	
)	
Respondents.)	
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RESPONDENTS’ STATUS REPORT

Pursuant to this Court’s order of April 2, 2021, Respondents National Highway Traffic Safety Administration (“NHTSA”) and the United States Environmental Protection Agency (“EPA”), et al. (collectively “Federal Agencies” or “Respondents”), provide the following status report. As explained below, the Federal Agencies’ review of the challenged rulemaking is ongoing. In fact, both Federal Agencies recently published proposed rulemakings, and the public comment period for NHTSA’s rulemaking remains open. Accordingly, Respondents recommend that these consolidated cases continue to be held in abeyance pending completion of that review.

1. These consolidated cases involve challenges to a jointly published NHTSA-EPA rulemaking entitled “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks.” 85 Fed. Reg. 24,174 (“SAFE II Rule” or “Rule”). The SAFE II Rule established two consonant sets of vehicle regulations for passenger cars and light trucks. The first, issued by NHTSA, reduced the applicable corporate average fuel economy standards for model year 2021 vehicles, which had been set in 2012, and set new fuel economy standards for model years 2022-2026. The second set of standards, issued by EPA, reduced the applicable vehicle greenhouse-gas emission standards for model years 2021 and later, which had also been set in 2012.

2. While merits briefing of these challenges was ongoing, President Joseph R. Biden Jr. signed Executive Order 13990 on “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” 86 Fed. Reg. 7037 (Jan. 25, 2021). That Executive Order specifically directed the Federal Agencies to review the SAFE II Rule for compliance with the terms of the Executive Order. Under the Executive Order, the Federal Agencies, “as appropriate and consistent with applicable law, shall consider publishing for notice and comment a proposed rule suspending, revising, or rescinding” the SAFE II Rule. *Id.* at 7037-38 (Section 2(a) & 2(a)(ii)).

3. Accordingly, on February 19, 2021, Respondents moved for an order holding these consolidated cases in abeyance until 30 days after the Federal Agencies complete their review of the SAFE II Rule and any resulting rulemaking. ECF No. 1886329. On April 2, 2021, the Court issued an Order granting Respondents' motion for abeyance. That Order requires the Agencies to file status reports at 90-day intervals and to notify the Court and the parties within 7 days of any agency action resulting from the review of the SAFE II Rule (or any determination that no action will be taken), and directs the parties file a motion or motions to govern further proceedings within 30 days of that notification. ECF No. 1892931.

4. Since that date, NHTSA and EPA have been working to develop notice-and-comment rulemakings. On August 10, EPA published a proposed rulemaking, and the comment period closed on September 27. 86 Fed. Reg. 43,726 (Aug. 10, 2021). On September 3, 2021, NHTSA published in the Federal Register a Notice of Proposed Rulemaking (NPRM or proposal). 86 Fed. Reg. 49,602 (Sept. 3, 2021). NHTSA's NPRM proposed revised fuel economy standards for passenger cars and light trucks for model years 2024-2026. The period for public comments on NHTSA's proposal closes on October 26, 2021. In addition, NHTSA announced a virtual public hearing on the proposal, which will be held on October 13, 2021. 86 Fed. Reg. 51,092 (Sept. 14, 2021). The Agencies

continue to make progress with respect to fulfilling the directives of Executive Order 13390.

5. In consideration of the above facts, Respondents believe their ongoing review of the SAFE II Rule justifies continued abeyance in the above-captioned case.

Respectfully submitted,

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DATED: September 29, 2021

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CERTIFICATE OF SERVICE

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

DATED: September 29, 2021

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