

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Competitive Enterprise Institute, et al.,

Petitioners,

v.

National Highway Traffic Safety
Administration, et al.,

Respondents.

No. 20-1145 and
consolidated cases**Respondents' Motion to Govern**

Respondents move to keep these consolidated cases in abeyance until reconsideration of the challenged action is complete. Save for intervenor American Honda Motor Company, who did not respond to Respondents' inquiry, no petitioner or intervenor opposes this motion.

Last April, the Court put these cases in abeyance pending reconsideration by Respondents NHTSA and EPA of the challenged action. Per Curiam Order (Apr. 2, 2021). That action, known as the SAFE II Rule, was jointly promulgated by NHTSA and EPA. 85 Fed. Reg. 24,174 (Apr. 30, 2020).

In ordering these cases into abeyance, the Court directed Respondents to file 90-day status reports and to notify it within 7 days of any agency action resulting from the reconsideration. Per Curiam Order (Apr. 2, 2021). The Court also ordered the parties to file motions to govern within 30 days of that notice. *Id.*

EPA concluded reconsideration of its part of the SAFE II Rule when it signed a final rule in December. Respondents' Status Report and Notice (Dec. 27, 2021); *see* 86 Fed. Reg. 74,434 (Dec. 30, 2021). NHTSA's reconsideration is ongoing. The agency recently issued a notice of proposed rulemaking as part of that proceeding. *See* 86 Fed. Reg. 49,602 (Sept. 3, 2021). It also held a virtual public hearing on the proposal on October 13. *See* 86 Fed. Reg. 51,092 (Sept. 14, 2021). The period for public comments closed in October. NHTSA anticipates making continued progress on the rulemaking.

Respondents ask that these cases remain in abeyance until NHTSA concludes reconsideration of its part of the joint SAFE II Rule, with a motion to govern due 30 days after that action.

Submitted on January 26, 2022.

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