#### ORAL ARGUMENT NOT YET SCHEDULED

# UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

TRUCK TRAILER
MANUFACTURERS ASS'N, INC.,

Petitioner,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY; SCOTT
PRUITT, in his official capacity
as Administrator, U.S. Environmental
Protection Agency; NATIONAL
HIGHWAY TRAFFIC SAFETY
ADMINISTRATION; and JACK
DANIELSON, in his official capacity as
Acting Deputy Administrator, National
Highway Traffic Safety Administration,

Respondents, and

CALIFORNIA AIR RESOURCES BOARD, et al,

Intervenors.

No. 16-1430 (consolidated with No. 16-1447)

Filed: 08/17/2017

#### RESPONDENTS' MOTION TO CONTINUE ABEYANCE

As directed by the Court's August 1, 2017, order, Respondents U.S.

Environmental Protection Agency et al. respectfully submit this motion to govern

further proceedings in these consolidated cases and request a 30-day extension of the abeyance period. Counsel for Respondents has conferred with counsel for the parties: Petitioner Racing Enthusiasts and Suppliers Coalition does not oppose this motion; and Petitioner Truck Trailer Manufacturers Association (Trailer Petitioner) takes no position pending review of the motion. Before filing this motion, Counsel for Respondents was unable to obtain responses from Intervenors, who may file their own responses to this motion.

Petitioners seek review of the action "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2," 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the Rule). The petitions for review were filed on December 22, 2016 (No. 16-1430) and December 27, 2016 (No. 16-1447). The Rule was promulgated by the U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) on behalf of the U.S. Department of Transportation under the Clean Air Act and the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act. A briefing schedule has not been established.

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<sup>&</sup>lt;sup>1</sup> Intervenors are the California Air Resources Board, State of Connecticut, State of Iowa, State of Massachusetts, State of Oregon, State of Rhode Island, State of Vermont, State of Washington, Center for Biological Diversity, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, and the Union of Concerned Scientists.

In April 2017 Respondents moved to hold the cases in abeyance for 90 days to give them time to review a request for review, reconsideration, and, in the interim, a stay of the Rule's trailer standards, submitted by Trailer Petitioner earlier that month. The Court granted that motion. See May 8, 2017, Order. In July Respondents moved for and were granted a four-week extension of the abeyance period to continue its review of Trailer Petitioner's administrative request, including supplemental material submitted on June 26. See August 1, 2017, Order.

Today, EPA sent a letter to Trailer Petitioner responding to its administrative request and expressing EPA's intent to develop and issue a Federal Register notice of proposed rulemaking to revisit the trailer provisions of the Rule. Also today, NHTSA sent Trailer Petitioner a letter granting the request for rulemaking. An extension of the abeyance period would give the parties time to review and consider the letters, and to confer about next steps in this litigation.

Respondents therefore respectfully request that these cases be held in continued abeyance until September 18, 2017, with motions to govern further proceedings due on that date.

Dated: August 17, 2017 Respectfully submitted,

> JEFFREY H. WOOD Acting Assistant Attorney General

/s/ Sue Chen

SUE CHEN

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### **Certificate of Compliance**

I certify that this filing complies with Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Times New Roman, a proportionally spaced font.

I further certify that this filing complies with the type-volume limitations of Fed. R. App. P. 27(d)(2)(A), because it contains 444 words, excluding the parts of the filing exempted under Fed. R. App. P. 32(f), according to the count of Microsoft Word.

/s/ Sue Chen	
SUE CHEN	

## **Certificate of Service**

I certify that on August 17, 2017, I filed the foregoing with the Court's CMS/ECF system, which will send notice to each party.

/s/ Sue Chen
Sue Chen