

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)

RESPONDENTS' MOTION TO CONTINUE ABEYANCE

As directed by the Court's August 21, 2017, order, Respondents U.S.

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

further proceedings in these consolidated cases and request an abeyance pending completion of administrative proceedings regarding the challenged rule. Counsel for Respondents has conferred with counsel for the parties and was unable to obtain consent from all parties.

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.

In April 2017 Respondents moved for and were granted a 90-day abeyance to give them time to review a request by Petitioner Truck Trailer Manufacturers Association (Trailer Petitioner) for review, reconsideration, and, in the interim, a stay of the Rule’s trailer standards. *See* May 8, 2017, Order. In July Respondents moved for and were granted a four-week extension of the abeyance period to continue that review. *See* August 1, 2017, Order.

On August 17, 2017, 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. On the same day, NHTSA sent Trailer Petitioner a letter granting the request for rulemaking. Respondents requested and were granted an extension until September 18, 2017, to give the parties time to review and consider the letters, and to confer about next steps in this litigation. *See* August 21, 2017, Order.

Respondents now request that the Court extend the abeyance period pending completion of the administrative proceedings discussed in these letters.

Extending the abeyance would preserve the resources of the parties and the Court. It is possible that the administrative proceedings could obviate the need for judicial resolution of some or all the issues raised by Trailer Petitioner. In addition, no party will be prejudiced by the relief requested in this motion: No briefing schedule has been set and the requested abeyance will preserve the parties' positions during this period.

Respondents therefore respectfully request that these cases continue to be held in abeyance pending completion of administrative proceedings regarding the challenged rule, with reports on the status of those proceedings due every 90 days.

Dated: September 18, 2017

Respectfully submitted,

JEFFREY H. WOOD
Acting Assistant Attorney General

/s/ 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 448 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 September 18, 2017, I filed the foregoing with the Court's CMS/ECF system, which will send notice to each party.

 /s/ Sue Chen

SUE CHEN