

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

TRUCK TRAILER MANUFACTURERS
ASSOCIATION, INC., *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*

Respondents,

and

CALIFORNIA AIR RESOURCES BOARD,
et al.,

Intervenors.

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

Conditional Opposition to Motion to Continue Abeyance

Respondents have requested a permanent abeyance of these consolidated cases pending the completion of their administrative reconsideration of the Final Rule entitled “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles -- Phase 2,” 81 Fed. Reg. 73478 (Oct. 25, 2016). *See* Respondents’ Motion to Continue Abeyance (Sept. 18, 2017). That Rule was promulgated by respondents the U.S. Environmental Protection Agency (“EPA”) and the National Highway Traffic Safety Administration

(“NHTSA”) (collectively, the “Agencies”). The Final Rule imposes new greenhouse gas emissions standards for trailers that require compliance beginning January 1, 2018 by members of petitioner Truck Trailer Manufacturers Association, Inc. (“TTMA”). *See* 81 Fed. Reg. 74,049; 40 C.F.R. § 1037.5(h)(4).

This litigation has been pending since December 22, 2016, and the Court has granted repeated abeyances at the Agencies’ request. TTMA asked the Agencies to reconsider the trailer provisions of the Final Rule on April 3, 2017. Pursuant to this Court’s Rule 18(a), TTMA simultaneously asked the EPA to grant a stay of the Rule’s greenhouse gas emissions provisions, as applied to trailers.¹ On August 17, 2017, the Agencies agreed to reconsider the Final Rule’s trailer provisions, including the question of whether the Agencies have authority to regulate greenhouse gas emissions and fuel economy for trailers in the first place. Letter from E. Scott Pruitt, EPA Administrator, to J. Martel and J. Sims (Aug. 17, 2017); Letter from Jack Danielson, Acting Deputy Administrator, NHTSA, to J. Sims (Aug. 17, 2017). But the EPA did not act on TTMA’s request for a stay, and it has declined to say when and if it plans to do so. Moreover, on September 14, 2017, after advising TTMA that they intended to move for a permanent abeyance, the Agencies advised that they have no timetable for reconsideration or for issuing a

¹ The fuel economy standards of the Final Rule, promulgated by NHTSA, do not take effect until 2021, and TTMA accordingly did not request a stay of those provisions.

new Notice of Proposed Rulemaking concerning the trailer provisions of the Final Rule.

In the meantime, TTMA's members face imminent compliance deadlines, given that the Final Rule's greenhouse gas emissions provisions will take effect on January 1, 2018. Because the EPA has not acted on TTMA's request for an administrative stay and has not provided any indication of whether or when it will do so, TTMA intends to move in this Court for a stay of the greenhouse gas provisions of the Final Rule within the next week.

TTMA respectfully requests that the Court decide that motion before deciding whether to grant the permanent abeyance that respondents now request. If the Court grants TTMA's forthcoming stay application, TTMA has no objection to holding the litigation in abeyance pending the Agencies' reconsideration of the Final Rule. But if the Court denies TTMA's request for a stay, TTMA asks this Court to deny the request for a permanent abeyance and to set a briefing schedule. TTMA appreciates that, in response to TTMA's explanation of the substantial defects in the trailer provisions of the Final Rule, the Agencies have agreed to reconsider those provisions. Still, without a timetable for reconsideration or action on TTMA's request for an administrative stay, as TTMA's members will explain in declarations in support of TTMA's forthcoming stay motion, they must take steps to comply with the January 1, 2018 deadline now. In the meantime it is

simply not fair to delay indefinitely judicial review of the Final Rule while at the same time forcing TTMA's members to comply with the Final Rule.

Accordingly, if this Court denies the forthcoming request for an stay, TTMA opposes the government's abeyance request. If the Court grants the forthcoming request for a stay, TTMA consents to the abeyance.

Dated: September 18, 2017

Respectfully submitted,

/s/ Elisabeth S. Theodore

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 632 words, excluding the parts of the filing exempted by Fed. R. App. P. 32(f). The filing complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6), respectively, because it was prepared in a proportionately spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

Dated: September 18, 2017

/s/ Elisabeth S. Theodore
Elisabeth S. Theodore

CERTIFICATE OF SERVICE

I hereby certify that, on September 18, 2017, the foregoing was electronically filed with the Court via the appellate CM/ECF system, and that copies were served on counsel of record by operation of the CM/ECF system on the same date.

Dated: September 18, 2017

/s/ Elisabeth S. Theodore
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