

ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 15, 2020

No. 16-1430

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

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

Petitioner,

v.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,**

Respondents.

On Petition for Review of Decision of the U.S. Environmental Protection
Agency and the U.S. Department of Transportation

**RESPONDENT-INTERVENORS' MOTION FOR EXTENSION OF
TIME TO RESPOND TO PETITIONER TRUCK
TRAILER MANUFACTURERS ASSOCIATION'S MOTION
FOR STAY**

INTRODUCTION

Pursuant to Rule 27(h) of the D.C. Circuit Rules, the California Air Resources Board, and the States of Connecticut, Iowa, Massachusetts, Oregon, Rhode Island, Vermont, and Washington (collectively, “State Respondent-Intervenors”) and the Respondent-Intervenor Public Health and Environmental Organizations hereby jointly move for an extension of time to file their oppositions to the Motion for Stay filed by Petitioner Truck Trailer Manufacturers Association (TTMA). TTMA filed its untimely Motion for Stay pending merits review over three-and-a-half years after initiating this case, and less than three weeks before the September 15 oral argument on the merits. ECF No. 1858510. Respondent-Intervenors request that their response be due on September 22, one week after the date of oral argument in this case. Counsel for the California Air Resources Board has contacted counsel for the parties in this action to obtain their positions on this motion. TTMA indicated it opposes this motion. Respondents indicated they do not oppose this motion.

BACKGROUND

On October 25, 2016, Respondents U.S. Environmental Protection Agency (EPA) and NHTSA (collectively, “Agencies”) jointly published a final rule in the Federal Register, in which, among other things, the Agencies promulgated greenhouse gas emission and fuel efficiency standards, respectively, for certain

types of trailers (collectively, “trailer standards”). 81 Fed. Reg. 73,478, 73,481 (Oct. 25, 2016).

On December 22, 2016, TTMA filed this action challenging the parts of the final rule that establish the trailer standards for heavy-duty trailers. The California Air Resources Board and seven States intervened to defend the standards, as did several environmental and public health organizations.

On September 18, 2017, after EPA initiated a proceeding to reconsider the trailer standards, EPA filed a motion asking the Court to hold the case in abeyance pending completion that reconsideration. ECF No. 1693423. On September 25, 2017, TTMA sought a stay from this Court to prevent EPA’s greenhouse gas emission standards for trailers from taking effect, as they were scheduled to do on January 1, 2018. ECF No. 1694522. On October 27, 2017, this Court granted the stay as to EPA’s standards and ordered that the case be held in abeyance. ECF No. 1701733.

On December 3, 2019, over two years later, TTMA filed a motion to lift the abeyance, which Respondent and Respondent-Intervenors did not oppose. ECF No. 1818576. On December 26, 2019, this Court lifted the abeyance, and established a briefing schedule. ECF No. 1821605. Pursuant to that schedule, as amended by the Court’s order on April 10, 2020 (EFC No. 1837729), the parties

completed merits briefing on June 23, 2020. On June 18, 2020, the Court set oral argument for September 15, 2020. ECF No. 1847973.

As established when promulgated in 2016, NHTSA's standards are scheduled to go into effect on January 1, 2021.

ARGUMENT

Respondent-Intervenors would be prejudiced if they are required to respond to TTMA's untimely petition within the ten days prescribed by this Court's rules. Oral argument in this case is scheduled for September 15, 2020—less than three weeks from the time of this filing and only eight days after Respondent-Intervenors' response would be due. As TTMA is aware, Respondent-Intervenors have requested time for oral argument. ECF No. 1858107. Accordingly, their counsel are currently preparing for oral argument, as well as handling their other cases and matters. Respondent-Intervenors should not be required to rush to respond, in this same window, to TTMA's stay motion, which could have been filed with its December 2019 motion to take this case out of abeyance or at any time thereafter.

Indeed, TTMA filed its Petition for Review in this matter nearly four years ago in December 2016, and has been aware of the effective date of NHTSA's trailer standards since at least October 25, 2016. It has been aware of the argument date in this case since June. Nonetheless, TTMA waited until this case was fully

briefed, with less than three weeks remaining until oral argument, to ask this Court to stay NHTSA's trailer standards. In its motion, TTMA provides no explanation for this delay. TTMA's choice to delay seeking a stay should not prejudice Respondent-Intervenors' preparation for oral argument in this case or their work in other matters.

All of the principal attorneys for Respondent-Intervenors are assisting with moots and other preparations for oral argument, which Alice Henderson, lead attorney for the Respondent-Intervenor Public Health and Environmental Organizations, is preparing to present. In addition, the principal attorneys representing Respondent-Intervenors in this case have other conflicts. Caitlan McLoon, attorney for the California Air Resources Board, is also working on a substantial and complex motion over the next two to three weeks. And many of Respondent-Intervenors' principal attorneys have young children and, because of the COVID-19 crisis, must balance work and childcare. For example, Susannah Weaver and Peter Zalzal, attorneys for the public health and environmental organizations each have two elementary-age children who just began or will begin a new school year next week virtually, from home, and need to devote significant time to ensuring a smooth transition to schooling from home.

Even if the merits argument was not imminent and Respondent-Intervenors' attorneys did not have other conflicts, responding to TTMA's motion and

accompanying declarations and factual averments in ten days would be challenging for State Respondent-Intervenors. State Respondent-Intervenors also need time to confer amongst themselves with respect to the substance of filings, and many of them have multi-layered internal review and approval processes that can only be initiated once the lead State has prepared a draft brief. Moreover, TTMA included extensive new factual averments with its motion. Preparation of an effective response requires Respondent-Intervenors to work with declarants outside of their organizations, and many of those declarants are not able to turn around fulsome responsive declarations in the ten days permitted as a default under the Court's rules.

By contrast, TTMA cannot claim prejudice from a delay, having inexplicably chosen to wait until less than three weeks before oral argument on the merits and over three-and-a-half years since filing its Petition for Review to file its motion for a stay pending review. And, TTMA did not request any specific date for a decision on its motion.

Finally, Respondent-Intervenors should be permitted to file their response after Respondent NHTSA, whom Respondent-Intervenors understand plans to file its response by September 7. Because NHTSA did not provide a position on TTMA's motion, it is not clear whether NHTSA plans to oppose TTMA's motion. If Respondent-Intervenors are the only parties opposing the stay, having sufficient

time to do so is imperative so that the only opposition before the Court will provide comprehensive argument to assist its review. And, if NHTSA does oppose TTMA's motion, then without first having an opportunity to review NHTSA's filing, it will be impossible for Respondent-Intervenors to do so without risk of significant duplication. Acknowledging a similar state of affairs with respect to briefing the merits of this case, the Court granted Respondent-Intervenors' request for a briefing schedule that afforded sufficient time to review Respondents' briefs prior to Respondent-Intervenors' own filing deadline. ECF No. 1821605. The same rationale applies here.

Thus, Respondent-Intervenors ask that the Court set a September 22 deadline for their responses to TTMA's motion. Given TTMA's years-long delay in seeking a stay of NHTSA's standards, extending Respondent-Intervenors' deadlines to respond to TTMA's motion by a modest window so that they can prepare effective responses to the motion, without unduly prejudicing their ability to prepare for oral argument, would not prejudice TTMA.

CONCLUSION

For the reasons stated above, Respondent-Intervenors request that the Court enlarge the time for their response to TTMA's motion until September 22, one week after the date of oral argument.

DATED: August 28, 2020

Respectfully submitted,

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¹ For purposes of ECF-3(b) of this Court's Administrative Order Regarding Electronic Case filing (May 15, 2009), counsel for the California Air Resources Board hereby represents that the other parties listed in the signature blocks that follow have consented to the filing of this memorandum.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the requirements of 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 requirements of Fed. R. App. P. 27(d)(2)(C) because it contains 1265 words, excluding the parts of the filing exempted under Fed. R. App. P. 32(f), according to Microsoft Word.

Dated: August 28, 2020

/s/ Ryan R. Hoffman
RYAN R. HOFFMAN
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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing MOTION FOR EXTENSION OF TIME TO RESPOND TO PETITIONER TRUCK TRAILER MANUFACTURERS ASSOCIATION'S MOTION FOR STAY on all parties via the Court's electronic case filing system.

Dated: August 28, 2020

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