

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)

UNITED STATES' RESPONSE TO STAY MOTION

Petitioner Truck Trailer Manufacturers Association (Trailer Petitioner) seeks to stay the trailer provisions 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 Rule was promulgated by the U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration 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.<sup>1</sup> No briefing schedule has been established.

The case was placed in abeyance in May 2017 at Respondents’ motion to give them time to review a request by Trailer Petitioner for review, reconsideration, and, in the interim, a stay of the Rule’s trailer standards. *See* May 8, 2017, Order; August 1, 2017, Order.

In August EPA announced that it had decided “to revisit the [Rule’s] trailer provisions in general, and the issue of the EPA’s authority to regulate trailers in particular.” Motion for Stay, Ex. D at 2. EPA further stated that it “intend[s] to

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<sup>1</sup> Trailer Petitioner seeks to stay only EPA’s portion of the Rule regarding trailers. *See* Motion for Stay, at 3 n.1.

develop and issue a Federal Register notice of proposed rulemaking on this matter, consistent with the requirements of the Clean Air Act.” *Id.*<sup>2</sup>

In light of the issues raised in Trailer Petitioner’s administrative request, EPA’s intent to revisit the Rule’s trailer provisions through notice-and-comment rulemaking (which could extend into next year), and Trailer Petitioner’s allegations of harm from the standards that are being revisited, EPA does not oppose the relief that Trailer Petitioner requests in its stay motion. In doing so, however, EPA takes no position on the merits of Trailer Petitioner’s underlying arguments regarding the trailer provisions. EPA intends to closely review the trailer provisions and the arguments raised by Trailer Petitioner as EPA develops the forthcoming notice-and-comment rulemaking. Accordingly, EPA is unable to represent its ultimate conclusions on these issues at this time, and does not make any concessions here as to issues that will be addressed in that rulemaking.

Dated: October 12, 2017

Respectfully submitted,

JEFFREY H. WOOD  
Acting Assistant Attorney General

*/s/ Sue Chen*

SUE CHEN  
U.S. Department of Justice  
Environment & Natural Resources  
Division

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<sup>2</sup> On September 18, 2017, Respondents moved to continue the abeyance pending completion of administrative proceedings regarding the Rule. Trailer Petitioner conditionally opposed that motion in a filing later that day.

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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 384 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*

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SUE CHEN

**Certificate of Service**

I certify that on October 12, 2017, I filed the foregoing with the Court's CMS/ECF system, which will send notice to each party.

          /s/ Sue Chen          

SUE CHEN