

ORAL ARGUMENT NOT YET SCHEDULED**No. 20-1169**

(consolidated with Nos. 20-1145, 20-1167, 20-1168,
20-1173, 20-1174, 20-1176, at 20-1177)

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

ENVIRONMENTAL DEFENSE FUND, et al.,

Petitioners,

v.

JAMES OWENS,
Administrator, National Highway Traffic Safety Administration

Respondent,

**PETITIONERS' NON-BINDING STATEMENT
OF ISSUES TO BE RAISED**

Petitioners challenge a final action of the National Highway Traffic Safety Administration (“NHTSA”) entitled The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24,174 (April 30, 2020) (“Final Rule”). The Final Rule purports to carry out NHTSA’s duties under the Energy Policy and Conservation Act (“EPCA”) and related statutes to establish corporate average fuel economy standards for cars and light trucks at maximum feasible levels.

In the Final Rule, NHTSA rescinded existing fuel economy standards for light-duty motor vehicles of Model Year 2021, and promulgated new, severely weakened standards for that model year. The Final Rule also establishes new standards for Model Years 2022-2026 that are dramatically less stringent than NHTSA had previously indicated would be appropriate.

Without waiving their right to modify these issues or raise additional ones, petitioners intend to raise the following issues:

1. Whether the Final Rule rests upon unlawful and unreasonable interpretations of EPCA, breached statutory duties, and disregarded statutory limitations.
2. Whether in the Final Rule NHTSA unlawfully weakened the minimum domestic passenger car standards applicable to Model Years 2021-2026.
3. Whether the final rule must be set aside as arbitrary and capricious because NHTSA failed adequately to consider and reasonably weigh the relevant statutory factors, failed to consider important aspects of the problems before it, improperly considered and gave undue weight to non-statutory factors, and failed to consider important aspects of the problem;
4. Whether the technical and economic analyses offered in support of the Final Rule are arbitrary, capricious, not in accordance with law, and not supported by the administrative record, including, without limitation, NHTSA's consideration and treatment of safety impacts; technology costs,

effectiveness, deployment, and feasibility; compliance costs; pollution impacts; fleet turnover; projected fleet “footprint”; projected vehicle miles traveled and associated impacts; impacts on public health, climate and the natural environment; impacts on consumers; identification of reference case vehicle fleet; supply chain effects; and macroeconomic effects, including effects on employment.

5. Whether NHTSA failed adequately to explain or justify departures from its own prior findings supporting more stringent fuel economy standards.
6. Whether NHTSA failed to comply with required procedures; failed to consider the full record; failed to provide a reasonable opportunity for public comment on the proposed rule; failed to make critical record material available for review and public comment, and failed to consider and respond to significant public comments.
7. Whether, in promulgating the Final Rule, NHTSA failed to comply with its obligations under the National Environmental Policy Act.
8. Whether EPA Acted arbitrarily and capriciously by failing to consider and address impacts of the final Rule on minority and low-income communities.
9. Whether NHTSA failed to comply with the Endangered Species Act and regulations under it.

Respectfully submitted,

/s/ Sean H. Donahue

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Certificate of Service

I certify that on this 29th day of June, 2020, I filed the foregoing Petitioners' Non-Binding Statement of Issues to Be Raised via the Court's CM/ECF system, which will provide copies to all registered counsel.

/s/ Sean H. Donahue