

[NOT YET SCHEDULED FOR ORAL ARGUMENT]

U.S. COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT

NATURAL RESOURCES DEFENSE  
COUNCIL,

PETITIONER,

v.

NATIONAL HIGHWAY TRAFFIC  
SAFETY ADMINISTRATION, et al.,

RESPONDENTS.

CASE NO. 22-1080 AND  
CONSOLIDATED CASES

**JOINT PROPOSED BRIEFING SCHEDULE AND FORMAT**

As ordered by the Court on July 13 and August 3, 2022, the parties jointly propose a schedule and format for briefing in this case.

Petitioners challenge the National Highway Traffic Safety Administration (NHTSA) action, Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks, 87 Fed. Reg. 25,710 (May 2, 2022). This Court has consolidated three petitions for review challenging that action. Petitioners are Natural Resources Defense Council (NRDC), 11 States, and American Fuel and Petrochemical Manufacturers (AFPM). Respondents are

NHTSA, Steven Cliff, Pete Buttigieg, and the U.S. Department of Transportation. Intervenors in the cases filed by the State petitioners and AFPM are a group of companies and trade organizations involved in the biofuels supply chain (intervening in support of petitioners); 21 States, the District of Columbia, and four local governments (intervening in support of respondents); the National Coalition for Advanced Transportation and Zero Emission Transportation Association (intervening in support of respondents); and a group of public-interest organizations (intervening in support of respondents). There are no intervenors in the case filed by NRDC.

The parties propose that the Court adopt the following briefing schedule and format:

| <b>Filing</b>                                | <b>Date due</b>   | <b>Word limit</b>  |
|--|-------------------|--|
| Petitioners' opening briefs                  | November 17, 2022 | 13,000 words for a single brief filed by the state petitioners and AFPM<br><br>9,500 words for a brief filed by NRDC |
| Briefs from any amici supporting petitioners | December 1, 2022  | 6,500 words  |
| Petitioner-intervenor's brief                | December 8, 2022  | 5,000 words  |
| Respondents' brief                           | February 28, 2023 | 27,500 words   |

|  |                |   |
|--|----------------|---|
| Briefs from any amici supporting respondents | March 14, 2023 | 6,500 words   |
| Respondent-intervenors' briefs               | March 21, 2023 | 10,800 words, shared among up to three briefs   |
| Petitioners' reply briefs                    | April 14, 2023 | 6,500 words for a single brief filed by the state petitioners and AFPM<br><br>4,750 for a brief filed by NRDC |
| Deferred appendix                            | April 21, 2023 |   |
| Final briefs due                             | April 28, 2023 |   |

The proposed briefing intervals reflect a number of factors that the parties accounted for in this complex, multi-party case, including: time needed for some parties to coordinate with each other to avoid duplicative briefing, time needed for respondents to coordinate among agencies of the federal government, federal holidays, and counsel's other work commitments. With regard to the last factor, many parties here are also parties in *Ohio v. EPA*, No. 22-1081 and consolidated cases (D.C. Cir.), and *Texas v. EPA*, No. 22-1031 and consolidated cases (D.C. Cir.), in which briefing is expected to be due in the same general time frame.

## **Petitioners' rationale for separate briefs and word allocations**

Petitioners need to file separate briefs because their interests and claims are at odds. This case involves two sets of petitioners. One set—American Fuel & Petrochemical Manufacturers and the state petitioners—contends that the agency's rule goes too far. The other set—the Natural Resources Defense Council—contends that the rule does not go far enough. Because these groups will raise fundamentally incompatible arguments, the Court should not require them to file joint briefs. The proposed aggregate word count will allow both groups to represent their interests adequately. That limit is (i) 5,250 words lower than the aggregate limit that Federal Rule of Appellate Procedure 32(a)(7)(B) would normally impose and (ii) significantly less than half the aggregate limit approved by this Court in *Competitive Enterprise Institute v. NHTSA*, No. 20-1145 (D.C. Cir. Oct. 19, 2020), which involved divergent challenges to an earlier version of the NHTSA standards challenged here.

Petitioner-intervenors are a group of a dozen stakeholders in the biofuels industry. While they agree with both the state petitioners and AFPM that NHTSA's rule must be set aside, petitioner-intervenors

respectfully submit that they also have separate and unique interests, particularly with respect to the Renewable Fuel Standard program and the way that NHTSA's consideration of electric vehicles upsets the various statutory incentives for non-electric alternative fuels such as ethanol. Petitioner-intervenors believe that a separate brief with a modest 5,000 word limit will allow them to address these matters without unnecessary duplication.

### **Respondent-Intervenors' rationale for separate briefs and word allocations**

As explained below, there are three distinct respondent-intervenor groups, each with markedly different litigation perspectives that justify separate briefs. Respondent-intervenors will still coordinate with each other in order to avoid unnecessary duplication among their briefs.

State and Local Government Intervenors are 21 States, the District of Columbia, and four local governments (cities and counties). This Court ordinarily does not compel governmental intervenors to file joint briefs with other intervenors, D.C. Cir. R. 28(d)(4), and there is no reason to depart from that sound practice here. The State and Local Government Intervenors have unique sovereign interests in fuel savings for their fleets, in attaining and

maintaining federal ambient air quality standards, and in protecting state lands, infrastructure, and resources from climate change. They should be allowed to advocate for their quasi-sovereign and sovereign interests in their own brief.

The Public Interest Organization Intervenors are six national and regional nonprofit environmental and public-health organizations committed to advancing their members' interest in wider availability of more-fuel-efficient vehicles and to protecting their members from the effects of harmful air pollution, including effects traceable to climate change. They have a different perspective from the other respondent-intervenors, who include state and municipal governments and industry parties. The Public Interest Organization Intervenors will coordinate with other parties to avoid duplication, but should be allowed to file their own brief.

The National Coalition for Advanced Transportation and Zero Emission Transportation Association Intervenors' members have invested and committed to investing hundreds of millions of dollars in advanced transportation technologies. Congress chose to allow the use of such technologies as a means of compliance with federal fuel-economy

standards, thereby incentivizing those technologies and encouraging investments in them. These respondent-intervenors bring unique perspectives regarding costs and technical assumptions made by NHTSA as well as the benefits to both consumers and the electricity grid to be obtained from widespread adoption of electric vehicles and other advanced technologies, and should be allowed to file their own brief.

Regarding word count, respondent-intervenors join the proposal to share a common word allotment of up to 10,800 words, or 60% of the combined word count for petitioners and petitioner-intervenors in case numbers 22-1144 and 22-1145. *Compare* Fed. R. App. P. 32(a)(7)(B)(i) with D.C. Cir. R. 32(e)(2)(b) (demonstrating the 70% ratio set forth in this Court's rules). Additionally, 10,800 words for respondent-intervenors is justified in this case because there are three different groups of respondent-intervenors with distinct interests and litigation perspectives. As explained above, these include a large group of States with recognized quasi-sovereign and sovereign interests in stringent federal standards that increase fuel efficiency, a number of environmental organizations, and industry parties representing electric

vehicle manufacturers and other business interests invested in the development and adoption of advanced transportation technologies. Respondent-intervenors require 10,800 words, collectively, in order to address the issues from their unique positions.

\* \* \*

For the foregoing reasons, the Court should enter the proposed briefing format and schedule set forth above.

Respectfully submitted,

August 31, 2022

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this motion complies with the requirements of Rule 27(d)(1)(E) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font.

*/s/ Joshua M. Koppel* \_\_\_\_\_  
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