

NOT YET SCHEDULED FOR ORAL ARGUMENT

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

States of Texas, Alabama, Alaska,
Arkansas, Indiana, Kentucky,
Louisiana, Mississippi, Missouri,
Montana, Nebraska, Ohio, Oklahoma,
South Carolina, and Utah,

Petitioners,

v.

U.S. Environmental Protection Agency
and Michael S. Regan, Administrator,

Respondents.

Case No. 22-1031 and consolidated
cases

Joint Proposed Briefing Schedule and Format

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

Petitioners challenge the EPA action, Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 74,434 (Dec. 30, 2021). This Court has consolidated 7 petitions for review challenging that action. Petitioners are 16 states and 26 organizations and individuals. Respondents are EPA and Michael S. Regan, its Administrator. Respondent-

Intervenors are 22 states, the District of Columbia, five local governments, and a number of industry and non-governmental organizations.

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

Filing	Date due	Words
Petitioners' opening briefs	November 3, 2022	21,000 words, shared between up to 2 briefs
Briefs from any amici supporting Petitioners	November 10, 2022	6,500 words
Respondents' answering brief	February 3, 2023	21,000 words
Briefs from any amici supporting Respondents	February 10, 2023	6,500 words
Respondent-Intervenors' briefs	February 28, 2023	14,700 words, shared between up to 4 briefs
Petitioners' replies	March 21, 2023	10,500 words, shared between up to 2 briefs
Deferred appendix	March 27, 2023	n/a
Final briefs due	March 30, 2023	See above

In addition, Petitioners and Respondents request that the Court schedule oral argument during the spring 2023 term. Respondent-Intervenors do not oppose this request.

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 obtain the necessary management approvals at the Justice Department and EPA, federal holidays, and counsel's other work commitments.

On the last factor, many parties here are also parties in *Ohio v. EPA*, Case No. 22-1081 and consolidated cases (D.C. Cir.), another complex petition-for-review matter for which briefing will start shortly. A proposed briefing format is also being submitted today in those consolidated cases, because the schedules were jointly negotiated to minimize conflicts.

Petitioners' rationale for separate briefs and word allocations

The private petitioners and the States need to file separate briefs because they have separate interests. Specifically, the State petitioners have sovereign interests that the private petitioners do not, such as how EPA's action at issue in this case will directly impact the State petitioners' electric grids. These differing interests may have direct bearing on both standing and the merits. The State petitioners also plan to confer with the private petitioners regarding arguments and to present non-duplicative arguments in their separate brief. The proposed word count will permit both groups to adequately represent their separate interests. And the proposed aggregate word limit of 21,000 words is substantially lower than the word count established in *Competitive Enterprise Institute et al v. EPA*, No. 20-1145 (order dated Oct. 19, 2020), which raised similar issues and set substantially larger word limits.

Respondent-Intervenors' rationale for separate briefs and word allocations

State and Local Government Intervenors are 22 States, the District of Columbia, and five 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. States have a well-established and particular “stake in protecting [their] quasi-sovereign interests” from the harms that vehicular greenhouse gas emissions cause. *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007). They should not be required to advocate for their quasi-sovereign and sovereign interests in a joint brief with other parties.

The Public Interest Organization respondent-intervenors are 11 national and regional nonprofit environmental and public health organizations committed to protecting their members from the effects of harmful air pollution, including effects traceable to climate change, and to advancing their members' interest in wider availability of cleaner vehicles. They have a different perspective from the other respondent-intervenors, who include state and municipal governments, vehicle manufacturers, and other industry parties. The Public Interest Organization respondent-intervenors will coordinate with other parties to avoid duplication, but should be allowed to file their own brief.

Respondent-Intervenor Alliance for Automotive Innovation (“AFAI”) is a trade association that represents the vehicle manufacturers obligated to comply with EPA’s GHG emissions standards across the full range of new vehicles sold in every market segment in the United States. Its members produce more than 97 percent of cars and light trucks sold in the U.S., and they have announced investments of over \$80 billion for vehicle electrification in America by 2030. AFAI has a unique interest in defending all the provisions in regulations challenged by Petitioners that are critical to its members’ compliance with the government’s standards. AFAI represents the regulated parties and thus has a different perspective from the other respondent-intervenors, who include state and municipal governments, public interest organizations, and other industry parties. AFAI will coordinate with other parties to avoid duplication, but should be allowed to file its own brief given its representation of the regulated parties.

Respondent-Intervenors National Coalition for Advanced Transportation, Advanced Energy Economy, Calpine Corporation, Consolidated Edison, Inc., National Grid USA, New York Power Authority, and Power Companies Climate Coalition collectively have invested billions of dollars in electric vehicle technology and infrastructure and clean generation technologies. The challenged action incentivizes adoption of electric vehicles and related technologies, and this litigation threatens these investments. These Respondent-Intervenors bring unique

perspectives regarding costs and technical assumptions made by the Agency and the benefits to both consumers and the electricity grid to be obtained from widespread adoption of electric vehicles. The distinct interests represented make it infeasible to join in a brief with other intervenors, although they will coordinate to avoid duplication.

As for word count, Respondent-Intervenors concur with the proposal that affords them 70% of the words allotted to the Petitioners and Respondents, consistent with the ratio set forth in this Court's rules. *Compare* Fed. R. App. P. 32(a)(7)(B)(i) with D.C. Cir. R. 32(e)(2)(b) (70% ratio). In addition, 14,700 words for Respondent-Intervenors is justified in this case because there are six different groups of Respondent-Intervenors, a number of which have distinct interests. These include a trade association that represents regulated vehicle manufacturers, a large group of States with recognized quasi-sovereign and sovereign interests in robust federal standards that reduce vehicular greenhouse gas emissions, a substantial number of environmental organizations, and other industry parties representing electric vehicle manufacturers and other business interests invested in the development and adoption of advanced transportation technologies. The Respondent-Intervenors require 14,700 words, collectively, in order to address the issues from their unique positions.

* * *

For these reasons, the parties ask the Court to enter their proposed briefing format and schedule as set forth above.

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