

ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF OHIO, et al.,

Petitioners,

v.

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY and MICHAEL S. REGAN

Respondents.

Case No. 22-1081 (and consolidated cases)

**MOTION OF NATIONAL COALITION FOR ADVANCED
TRANSPORTATION TO INTERVENE AS A RESPONDENT**

TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	3
LEGAL STANDARD.....	5
ARGUMENT	6
I. THE TRANSPORTATION COALITION HAS ARTICLE III STANDING.....	6
II. THIS MOTION IS TIMELY	10
III. THE TRANSPORTATION COALITION HAS PROTECTABLE INTERESTS AT ISSUE.....	10
IV. THE RELIEF SOUGHT WOULD IMPAIR THE TRANSPORTATION COALITION’S ABILITY TO PROTECT ITS INTERESTS	11
V. THE TRANSPORTATION COALITION ALSO SATISFIES THE STANDARDS FOR PERMISSIVE INTERVENTION	14
CONCLUSION.....	15

TABLE OF AUTHORITIES**Page(s)****CASES**

<i>Am. Horse Prot. Ass'n v. Veneman</i> , 200 F.R.D. 153 (D.D.C. 2001)	12
<i>Carpenters Indus. Council v. Zinke</i> , 854 F.3d 1 (D.C. Cir. 2017)	10
<i>Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n</i> , 788 F.3d 312 (D.C. Cir. 2015)	3, 6, 8, 10, 12
<i>Dimond v. District of Columbia</i> , 792 F.2d 179 (D.C. Cir. 1986)	13
<i>EEOC v. Nat'l Children's Ctr., Inc.</i> , 146 F.3d 1042 (D.C. Cir. 1998)	14
<i>Fund for Animals v. Norton</i> , 322 F.3d 728 (D.C. Cir. 2003)	10, 12, 13
<i>Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., AFL-CIO, Local 283 v. Scofield</i> , 382 U.S. 205 (1965)	5
<i>Jones v. Prince George's Cnty., Md.</i> , 348 F.3d 1014 (D.C. Cir. 2003)	11
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992)	7
<i>Mass. Sch. of Law at Andover, Inc. v. United States</i> , 118 F.3d 776 (D.C. Cir. 1997)	6
<i>N.Y. Pub. Int. Rsch. Grp., Inc. v. Regents of Univ. of N.Y.</i> , 516 F.2d 350 (2d Cir. 1975)	11
<i>Nat. Res. Def. Council v. Costle</i> , 561 F.2d 904 (D.C. Cir. 1977)	13

Nat’l Parks Conservation Ass’n v. EPA,
759 F.3d 969 (8th Cir. 2014)11

Sierra Club v. EPA,
292 F.3d 895 (D.C. Cir. 2002).....6, 7

Union of Concerned Scientists v. NHTSA,
No. 19-1230 (D.C. Cir.).....5

United States v. Am. Tel. & Tel. Co.,
642 F.2d 1285 (D.C. Cir. 1980).....12

WildEarth Guardians v. Salazar,
272 F.R.D. 4 (D.D.C. 2010).....13

STATUTES

42 U.S.C.
§ 7507.....1, 4
§ 7521(a)4
§ 7543.....3
§ 7543(b)(1)1, 4

RULES

Fed. R. App. P. 15(d)1, 3, 5, 10

Fed. R. Civ. P.
24.....5, 10
24(a)(2)6, 11
24(b)(1)(B).....6, 14

REGULATIONS

78 Fed. Reg. 2112 (Jan. 9, 2013)1, 4
87 Fed. Reg. 14,332 (Mar. 14, 2022).....1, 4, 5, 9

OTHER AUTHORITIES

Comments of the National Coalition for Advanced Transportation on
the proposed Reconsideration of a Previous Withdrawal of a
Waiver of Preemption, Docket No. EPA-HQ-OAR-2021-0257, at
17-18 (July 6, 2021), [https://www.regulations.gov/comment/EPA-
HQ-OAR-2021-0257-0131](https://www.regulations.gov/comment/EPA-
HQ-OAR-2021-0257-0131)9

INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), the National Coalition for Advanced Transportation (“Transportation Coalition”) respectfully moves to intervene in case 22-1081 and consolidated cases in support of Respondents, the United States Environmental Protection Agency (“EPA”) and Michael S. Regan, Administrator. Under Clean Air Act Section 209(b), EPA generally must grant California a waiver of preemption for the adoption of new motor vehicle emission standards if California’s standards are “at least as protective of public health and welfare as applicable Federal standards.” 42 U.S.C. § 7543(b)(1). The Clean Air Act also allows other states to adopt motor vehicle emissions standards for which California has obtained a waiver. 42 U.S.C. § 7507.

In 2013, following California’s request for a waiver of preemption for its low emission vehicle greenhouse gas standards and zero emission vehicle standards, EPA determined California met all the necessary criteria for a waiver and granted California’s request, thereby fulfilling its statutory obligations as EPA had consistently done for many decades. 78 Fed. Reg. 2112 (Jan. 9, 2013). However, in an unprecedented action, EPA partially withdrew California’s waiver in 2019, and litigation followed. EPA has now reversed that unlawful 2019 action, reinstating California’s waiver, consistent with EPA’s statutory obligations. 87 Fed. Reg. 14,332, 14,333 (Mar. 14, 2022).

The petitions in these consolidated cases challenge EPA’s 2022 reinstatement of California’s waiver. Movant Intervenor Transportation Coalition participated in the proceedings leading to the actions challenged in this case, including by filing comments on EPA’s proposed reconsideration of its previous withdrawal of California’s waiver. And the Transportation Coalition has an unambiguous interest in defending EPA’s reinstatement of California’s waiver. The Transportation Coalition is a group of companies and non-profit organizations that support electric vehicle and other advanced transportation technologies and related infrastructure.¹ The Transportation Coalition’s members include electric vehicle manufacturers, power companies, and electric vehicle charging infrastructure companies. Several of the Transportation Coalition members are directly subject to the state regulations at issue in EPA’s reinstatement of California’s waiver. The Transportation Coalition’s members collectively have invested and committed to investing hundreds of millions of dollars to build infrastructure to support increased electric

¹ The Transportation Coalitions’ membership currently includes Constellation Energy Corporation, Edison International, EVgo, Exelon Corporation and its affiliate operating companies (Atlantic City Electric, Baltimore Gas & Electric, Commonwealth Edison Company, Delmarva Power, PECO, and PEPCO), Lucid USA, Inc. (“Lucid”), Pacific Gas and Electric Company, Plug In America, Portland General Electric, Rivian Automotive (“Rivian”), Sacramento Municipal Utility District, and Tesla, Inc. (“Tesla”). Transportation Coalition member Center for Climate and Energy Solutions is not participating in this litigation as this organization does not participate in litigation as a matter of general practice.

vehicle deployment and are engaged in proceedings for integrating electric vehicle load to the electric grid. For all these reasons, the Transportation Coalition has a direct and immediate interest in this matter and satisfies every factor for intervention as of right under Rule 15(d) and this Circuit's precedents. *See, e.g., Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 316, 320 (D.C. Cir. 2015) (addressing factors for "intervention as of right"). The Transportation Coalition thus seeks to intervene as of right to defend EPA's reinstatement of California's waiver. Alternatively, the Transportation Coalition meets the requirements for permissive intervention.

Counsel for the Transportation Coalition has conferred with counsel for Respondents and Petitioners. Respondents do not oppose the motion. The Petitioners in Case No. 22-1081 do not object to the motion. Petitioners in Case Nos. 22-1083, 22-1084 and 22-1085 take no position on the motion.

BACKGROUND

Clean Air Act Section 209(b) directs EPA to grant California a waiver of preemption to Section 209(a), which otherwise preempts states from adopting emission control standards for new motor vehicles. 42 U.S.C. § 7543. EPA may only deny California a waiver if EPA finds that (A): California's determination is arbitrary and capricious; (B) California does not need the standards "to meet compelling and extraordinary circumstances"; or (C) California's standards are

inconsistent with Clean Air Act Section 202(a), 42 U.S.C. § 7521(a)—requiring standards to be technologically feasible. *Id.*; 42 U.S.C. § 7543(b)(1).

Although Section 209(a) generally preempts other states from receiving their own waivers, Section 177 permits other states to adopt and enforce California’s standards for which EPA has already granted a waiver. (“Section 177 States”). 42 U.S.C. § 7507. Following Congress’s enactment in 1977 of this statutory preemption exception for California, EPA for over forty years fulfilled its statutory obligations, granting California dozens of preemption waivers. 87 Fed. Reg. 14,332 (Mar. 14, 2022).

In 2013, EPA, after reviewing a robust and technical record, granted California a waiver of preemption for the State’s Advanced Clean Car program, aimed at reducing vehicle pollutants and greenhouse gas emissions. 78 Fed. Reg. 2112 (Jan. 9, 2013). Between 2013 to 2019, twelve Section 177 States relied on EPA’s grant of waiver by adopting some form of California’s standards for their own emission reduction programs. 87 Fed. Reg. 14,332, 14,333 (Mar. 14, 2022).

Following the change in Administration in 2019, however, EPA issued a final action that partially withdrew California’s waiver—the only time EPA has ever withdrawn an already granted waiver—and interpreted Clean Air Act to preclude Section 177 States from adopting California’s standards. The Transportation Coalition, along with multiple groups of stakeholders—including States, air

districts, public interest organizations and other industry petitioners—challenged EPA’s 2019 action as arbitrary and capricious, exceeding EPA’s authority, and contravening Congressional intent, among other deficiencies. *See Union of Concerned Scientists v. NHTSA*, No. 19-1230 (D.C. Cir.) (consolidated cases).

In March of 2022, following another Administration change, EPA announced its intent to reconsider its 2019 action and the consolidated cases were held in abeyance, pending the outcome of EPA’s reconsideration. EPA issued a final action rescinding its 2019 action, stating its previous partial withdrawal of California’s waiver was “improper,” “flawed,” and “misapplied the facts.” 87 Fed. Reg. 14,332, 14,333 (Mar. 14, 2022). EPA’s 2022 action reinstated California’s 2013 waiver and allowed Section 177 States to continue to adopt and enforce California’s standards under the waiver. *Id.*

LEGAL STANDARD

Federal Rule of Appellate Procedure 15(d) provides that a motion for leave to intervene “must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.” Appellate courts refer to Federal Rule of Civil Procedure 24 when reviewing motions to intervene in administrative review petitions like this one. *See Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am., AFL-CIO, Local 283 v. Scofield*, 382 U.S. 205, 216-17 n.10 (1965) (Fed. R. Civ. P. 24

policies “may be applicable in appellate courts”); *Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997) (same). An applicant is entitled to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) if it satisfies five conditions. First, the applicant must demonstrate that it has Article III standing. *See Crossroads*, 788 F.3d at 316. The Court then applies a four-factor test, requiring that: (1) the motion to intervene be timely; (2) the applicant claims a legally protected interest; (3) the action, as a practical matter, impairs or impedes that interest; and (4) the potential intervenor’s interest cannot adequately be represented by another party to the action. *See id.* at 320. Alternatively, under Federal Rule of Civil Procedure 24(b)(1)(B), “[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.”

ARGUMENT

Because the Transportation Coalition satisfies all of the requirements for intervention, this motion should be granted.

I. THE TRANSPORTATION COALITION HAS ARTICLE III STANDING

“The standing inquiry for an intervening-defendant is the same as for a plaintiff: the intervenor must show injury in fact, causation, and redressability.” *Crossroads*, 788 F.3d at 316 (citation omitted); *see also Sierra Club v. EPA*, 292 F.3d 895, 898-99 (D.C. Cir. 2002). An association has constitutional standing on

behalf of its members if (1) at least one member would have standing in its own right, (2) “the interests the association seeks to protect are germane to its purpose,” and (3) “neither the claim asserted nor the relief requested requires that an individual member of the association participate in the lawsuit.” *Id.* at 898. As demonstrated below, the Transportation Coalition has standing to intervene as a respondent in this case.

At least one Transportation Coalition member has standing to be a party in its own right. Transportation Coalition members Tesla, Lucid, and Rivian manufacture all-electric vehicles sold throughout the United States and are, therefore, subject to California and Section 177 States’ motor vehicle standards. Petitioners in these consolidated cases challenge EPA’s reinstatement of California’s waiver, therefore, directly impacting Transportation Coalition members Tesla, Lucid, and Rivian. The Transportation Coalition thus easily satisfies the injury-in-fact requirement. *See* Declaration of Joseph Mendelson, III (“Mendelson Decl.”) ¶ 8; Declaration of O. Kevin Vincent (“Vincent Decl.”) ¶ 7. If a party “is ‘an object of the [agency] action (or forgone action) at issue’ . . . there should be ‘little question’” regarding standing. *Sierra Club*, 292 F.3d at 900 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992)). Electric vehicle manufacturers, on the well-founded expectation that EPA would uphold the waiver it granted for California’s standards and maintain Section 177 States’ right to adopt and enforce those standards, have invested or are

currently investing billions of dollars in manufacturing zero emission vehicles. *See* Mendelson Decl. ¶¶ 9-11. California and Section 177 States’ continued ability to enforce their regulations, achieve emissions reductions, and foster these technological innovations depends upon the waiver. Petitioners’ effort to invalidate EPA’s reinstatement of California’s waiver, directly threatens and undermines the substantial investments of manufacture and infrastructure companies. *See id.* ¶¶ 14-17; Declaration of Michael Backstrom (“Backstrom Decl.”) ¶¶ 12-13; Vincent Decl. ¶ 8.

Petitioners’ challenge to EPA’s reinstatement of California’s waiver of preemption is the cause of the potential harm to these Transportation Coalition members, and a decision in Respondents favor would redress the potential injury to the Transportation Coalition members. Because the Transportation Coalition members meet the injury-in-fact requirement, they necessarily meet the causation and redressability requirements for standing. Where a suit challenges an agency decision that was in the movant intervenor’s favor, “it rationally follows [that] the injury is directly traceable to [plaintiff’s] challenge.” *Crossroads*, 788 F.3d at 316. In such cases, the causation and redressability requirements for standing are met. *Id.* The same is true here where Petitioners seek to vacate EPA’s reinstatement of California’s waiver, directly threatening the Transportation Coalition members’ billions of dollars in investments in the electric transportation industry.

The interests the Transportation Coalition seeks to protect in this suit are germane to the organization's purpose of promoting policies to foster electric vehicle and other advanced transportation technologies and related infrastructure. Indeed, the Transportation Coalition and its members participated in the proceedings leading to the actions challenged in this case, including by filing comments with the agencies. *See* 87 Fed. Reg. at 14,332, 14,347 (citing Transportation Coalition comments on EPA's proposed action); Mendelson Decl. ¶¶ 13; Backstrom Decl. ¶ 10. The Transportation Coalition's members collectively have invested and committed to investing hundreds of millions of dollars to build infrastructure to support increased electric vehicle deployment, and members are engaged in proceedings to establish rate structures and programs to maximize the benefits and minimize the costs of integrating electric vehicle load to the electric grid. *See* Backstrom Decl. ¶¶ 5-9; Comments of the National Coalition for Advanced Transportation on the proposed Reconsideration of a Previous Withdrawal of a Waiver of Preemption, Docket No. EPA-HQ-OAR-2021-0257, at 17-18 (July 6, 2021), <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0257-0131>.

The Transportation Coalition would suffer economic injuries if Petitioners succeed in vacating EPA's reinstatement of California's waiver. California's waiver for its low and zero emission vehicle standards and Section 177 States' continued ability to adopt and enforce those standards incentivizes electric vehicle

manufacturing, spurs technology innovation, and promotes emissions reductions. *See* Mendelson Decl. ¶ 9. Vacatur of EPA’s action reinstating California’s waiver would undermine the regulatory drivers for vehicle electrification and threaten the benefits of the Transportation Coalition’s investments. *See* Mendelson Decl. ¶¶ 16-17; Backstrom Decl. ¶¶ 12-13; Vincent Decl. ¶¶ 7-8. These types of economic injuries constitute cognizable harm sufficient to demonstrate constitutional standing. *See Carpenters Indus. Council v. Zinke*, 854 F.3d 1, 5 (D.C. Cir. 2017) (“Economic harm to a business clearly constitutes an injury-in-fact. And the amount is irrelevant.”). And the claims and relief requested do not require any individual member of the Transportation Coalition to participate in the litigation.

II. THIS MOTION IS TIMELY

Under Federal Rule of Appellate Procedure 15(d), the deadline for filing a motion to intervene in a proceeding for judicial review of an administrative agency action is 30 days after the petition is filed. This motion is timely.

III. THE TRANSPORTATION COALITION HAS PROTECTABLE INTERESTS AT ISSUE

This Court has held that the existence of constitutional standing suffices to show a legally protected interest for purposes of Rule 24. *See Crossroads*, 788 F.3d at 320 (“[S]ince [the proposed defendant-intervenor] has constitutional standing, it *a fortiori* has ‘an interest relating to the property or transaction which is the subject of the action.’” (quoting *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C.

Cir. 2003)); *see also Jones v. Prince George's Cnty., Md.*, 348 F.3d 1014, 1017, 1018-19 (D.C. Cir. 2003). As explained in Section I, the Transportation Coalition has protectable interests: EPA's reinstatement of California's waiver, which Petitioners challenge in these consolidated cases, directly impacts Transportation Coalition members as Transportation Coalition members are subject to the standards at issue in the waiver and the Transportation Coalition members have financial interests in EPA's reinstatement of the waiver. *See Nat'l Parks Conservation Ass'n v. EPA*, 759 F.3d 969, 976 (8th Cir. 2014) (permitting industry group to intervene where relief would result in expenses for members of the group); *N.Y. Pub. Int. Rsch. Grp., Inc. v. Regents of Univ. of N.Y.*, 516 F.2d 350, 351-52 (2d Cir. 1975) (finding pharmacists' financial stake in upholding a regulation was sufficient to support intervention as of right). For all of these reasons, the Transportation Coalition satisfies the significant protectable interest requirement.

IV. THE RELIEF SOUGHT WOULD IMPAIR THE TRANSPORTATION COALITION'S ABILITY TO PROTECT ITS INTERESTS

To satisfy the third part of the Rule 24(a)(2) test, the Transportation Coalition need only show that an unfavorable disposition of this action "may as a practical matter impair or impede [its] ability to protect its interests." Fed. R. Civ. P. 24(a)(2).

Petitioners' requested relief—that this Court vacate EPA's action reinstating California's waiver of preemption—substantially endangers the Transportation Coalition's interests. As explained in Section I, California's and Section 177 States'

ability to adopt and enforce their motor vehicle standards directly impacts Transportation Coalition members that are subject to those standards and have significant financial interests and investments tied to EPA's grant of California's waiver. *The Transportation Coalition's Interests Are Not Adequately Represented by the Existing Parties.*

As this Court has explained, “a movant ‘ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation.’” *Crossroads*, 788 F.3d at 321 (quoting *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980)). This requirement is “not onerous” and represents a “low” threshold. *Id.* (quoting *Fund for Animals*, 322 F.3d at 735, 736 n.7).

The Transportation Coalition's interests in this action are not adequately represented by EPA. The Transportation Coalition has a significant interest in protecting its financial interests in EPA's reinstatement of California's waiver. *See supra* Section I. EPA's “general interest” in seeing its decision upheld “does not mean [the parties'] particular interests coincide so that representation by the agency alone is justified.” *Am. Horse Prot. Ass'n v. Veneman*, 200 F.R.D. 153, 159 (D.D.C. 2001). To the contrary, EPA's interests, as a regulatory agency, differ from those of regulated private parties. *See, e.g., Crossroads*, 788 F.3d at 321 (“[W]e look skeptically on government entities serving as adequate advocates for private parties.”).

This Court has long recognized that the government does not adequately represent the specific, narrower economic and other interests of private parties that may be affected by the litigation. *See, e.g., Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986); *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 912 n.41 (D.C. Cir. 1977). That is particularly true when a private-party intervenor asserts a “financial stake in the outcome” of the action. *Dimond*, 792 F.2d at 192. While the government has a duty to represent the interests of the public at large, private parties “seek[] to protect a more narrow and ‘parochial’ financial interest not shared” by the general public. *Id.* at 193; *see also Fund for Animals*, 322 F.3d at 736-37 & n.9 (collecting cases recognizing that “governmental entities do not adequately represent the interests of aspiring intervenors”).

Nor can states, other public interest groups, or other industry movant intervenors represent the Transportation Coalition’s unique interests in the litigation. The Transportation Coalition represents the interests of private sector businesses in promoting electric vehicles and related infrastructure development and deployment. The Transportation Coalition’s interests are therefore distinct and different from the interests of state and local governments, public interest group and other movant-intervenors. *See WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 17-18 (D.D.C. 2010) (permitting intervention where other industry parties did not represent particular interests of proposed intervenor).

V. THE TRANSPORTATION COALITION ALSO SATISFIES THE STANDARDS FOR PERMISSIVE INTERVENTION

“On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). An applicant for permissive intervention should present the Court with “(1) an independent ground for subject matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action.” *EEOC v. Nat’l Children’s Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998) (citation omitted). The Transportation Coalition also satisfies this standard for permissive intervention.

First, this Court has an independent basis for subject matter jurisdiction over the defenses that the Transportation Coalition will advance. Because Petitioner’s claims arise under the laws of the United States—the Clean Air Act and the Administrative Procedure Act—and the Transportation Coalition has Article III standing, *see supra* Section I, this Court has original jurisdiction. *Second*, as explained above, this motion is timely. *See supra* Section II. Intervention at this early stage of litigation will not delay the proceeding, and the Transportation Coalition is prepared to meet any schedule set by this Court. *Third*, because the Transportation Coalition will raise defenses directly responsive to Petitioner’s claims, it necessarily will assert a claim or defense in common with the main action and satisfies the “common question of law or fact” requirement.

As such, the criteria for permissive intervention likewise support the Transportation Coalition's motion to intervene.

CONCLUSION

For the foregoing reasons, the Transportation Coalition respectfully requests that this Court grant its motion to intervene.

Dated: June 13, 2022

Respectfully submitted,

/s/ Stacey L. VanBellegem

Stacey L. VanBellegem (D.C. Bar #
988144)

LATHAM & WATKINS LLP
555 11th Street NW, Suite 1000
Washington, D.C. 20004

Tel: (202) 637-2200

Fax: (202) 637-2201

Email: stacey.vanbellegem@lw.com

*Counsel for the National Coalition for
Advanced Transportation*

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 27(a)(2)(b) and 32, this document contains 3,108 words, as determined by the word-count function of Microsoft Word.

This document complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: June 13, 2022

/s/ Stacey L. VanBelleghem

Stacey L. VanBelleghem

*Counsel for the National Coalition for
Advanced Transportation*

CERTIFICATE OF PARTIES

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), I certify that the parties—including intervenors and amici curiae—are set forth below.

Petitioners: The States of Ohio, Alabama, Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Oklahoma, South Carolina, Texas, Utah and West Virginia (Case No. 22-1081); Iowa Soybean Association, The Minnesota Soybean Growers Association, South Dakota Soybean Association, and Diamond Alternative Energy, LLC, (Case No. 22-1083); American Fuel & Petrochemical Manufacturers, Domestic Energy Producers Alliance, Energy Marketers of America, and National Association of Convenience Stores (Case No. 22-1084); Clean Fuels Development Coalition, ICM, Inc., Illinois Corn Growers Association, Kansas Corn Growers Association, Michigan Corn Growers Association, Missouri Corn Growers Association, and Valero Renewable Fuels Company, LLC, (Case No. 22-1085).

Respondents: United States Environmental Protection Agency and Michael S. Regan, Administrator, United States Environmental Protection Agency.

Proposed Intervenors: The States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin, the Commonwealths of Massachusetts and

Pennsylvania, the District of Columbia, and the Cities of Los Angeles and New York; Center for Biological Diversity, Clean Air Council, Conservation Law Foundation, Environmental Defense Fund, Environmental Law and Policy Center, National Parks Conservation Association, Natural Resources Defense Council, Public Citizen, Sierra Club, and Union of Concerned Scientists; and Volvo Car USA LLC, American Honda Motor Co., Inc., BMW of North America, LLC, Volkswagen Group of America, Inc. and Ford Motor Company.

Amici Curiae: There are no amici curiae at the time of this filing.

Dated: June 13, 2022

Respectfully submitted,

/s/ Stacey L. VanBelleghem

Stacey L. VanBelleghem (D.C. Bar #
988144)

LATHAM & WATKINS

555 11th Street NW, Suite 1000

Washington, D.C. 20004

Tel: (202) 637-2200

Fax: (202) 637-2201

Email: stacey.vanbelleghem@lw.com

*Counsel for the National Coalition for
Advanced Transportation*

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Petitioner National Coalition for Advanced Transportation (the “Transportation Coalition”) states as follows:

The Transportation Coalition is a coalition of companies and non-profit organizations that supports electric vehicle and other advanced transportation technologies and related infrastructure, including business leaders engaged in energy supply, transmission and distribution; vehicle and component design and manufacturing; and charging infrastructure production and implementation, among other activities. The Transportation Coalition is an unincorporated association and does not have a parent corporation. No publicly-held entity owns 10% or more of the Transportation Coalition.

The Transportation Coalition currently has the following members¹:

- Atlantic City Electric
- Baltimore Gas and Electric Company
- Commonwealth Edison Company
- Constellation Energy Corporation
- Delmarva Power

¹ NCAT member Center for Climate and Energy Solutions is not participating in this litigation as it does not participate in litigation as a matter of general practice.

- Edison International
- EVgo
- Exelon Corporation
- Lucid USA, Inc.
- Pacific Gas and Electric Company
- PECO
- PEPCO
- Plug In America
- Portland General Electric
- Rivian Automotive
- Sacramento Municipal Utility District
- Tesla, Inc.

Dated: June 13, 2022

Respectfully submitted,

/s/ Stacey L. VanBellegem

Stacey L. VanBellegem (D.C. Bar #
988144)

LATHAM & WATKINS

555 11th Street NW, Suite 1000

Washington, D.C. 20004

Tel: (202) 637-2200

Fax: (202) 637-2201

Email: stacey.vanbellegem@lw.com

*Counsel for the National Coalition for
Advanced Transportation*

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June, 2022, I caused the foregoing Motion to be electronically filed with the Clerk of the Court via the Court's CM/ECF system. All registered counsel will be served by the Court's CM/ECF system.

Dated: June 13, 2022

/s/ Stacey L. VanBelleghem _____

Stacey L. VanBelleghem

*Counsel for the National Coalition for
Advanced Transportation*

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF OHIO, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and MICHAEL
S. REGAN,

Respondents.

Case Nos. 22-1081,
and consolidated cases

DECLARATION OF JOSEPH MENDELSON, III

I, Joseph Mendelson, III, do hereby declare that the following statements made by me under oath are true and accurate to the best of my knowledge, information, and belief:

1. I am Senior Counsel, Public Policy and Business Development at Tesla, Inc. (“Tesla”). I am responsible for Tesla’s relations with state agencies, including the California Air Resources Board that carries out California’s Low Emissions Vehicle III greenhouse gas and Zero Emissions Vehicle standards and agencies in the states that have adopted greenhouse gas and zero emission vehicle regulations identical to California’s under Section 177 of the Clean Air Act (the “Section 177

States”). I am also responsible for relations with federal agencies related to the United States Environmental Protection Agency’s (“EPA”) light-duty vehicle greenhouse gas vehicle emissions standards. I managed Tesla’s participation in the regulatory process, including drafting and submitting written comments in support of EPA reinstating the Clean Air Act Section 209(b) waiver it granted to California in 2013 for state vehicle greenhouse gas and Zero Emission Vehicle standards, and reversing EPA’s unlawful determination that the Section 177 States may not adopt or enforce greenhouse gas regulations identical to those for which California has been granted a waiver.

2. Tesla is a member of the National Coalition for Advanced Transportation.

3. Tesla is a publicly traded corporation, incorporated in the State of Delaware on July 1, 2003, with headquarters located at 1 Tesla Road, Austin, Texas 78725.

4. Tesla’s mission is to accelerate the world’s transition to sustainable energy. Moreover, Tesla believes the world will not be able to solve the climate change crisis without directly reducing air pollutant emissions—including carbon dioxide and other greenhouse gases—from the transportation and power sectors.

5. To accomplish its mission, Tesla designs, develops, manufactures, and sells high-performance fully electric vehicles and energy generation and storage

systems, installs and maintains such systems, and sells solar electricity. Tesla currently produces and sells four fully electric vehicles: the Model S sedan, the Model X sport utility vehicle, the Model 3 sedan, and the Model Y mid-sized SUV. In 2021, the Tesla Model 3 ranked as the most American made car, based on overall contributions to the U.S. economy, and the Model Y ranked just below as the third most American made car on the market.¹ Both the Tesla Model 3 and Model Y also rank in the top five of vehicles sold in California.² Tesla's Model 3 is now the world's best-selling premium sedan and the Model Y has become one of the top selling SUVs in the country.³ Tesla vehicles have also received a number of distinctions, including over the past year the Model 3 being included in Consumer Reports' 2020 "Top Picks" List and the Model S being named Motor Trend's Ultimate Car of the Year.

6. Tesla has made significant investments to establish, and continues to grow, a large network of retail stores, vehicle service centers, and electric vehicle

¹ Cars.com, [Tesla Model 3 Snags No. 1 Spot on Cars.com's 2021 American-Made Index®; First All-Electric Vehicle to Top the List in Its 16-Year History](#) (June 23, 2021); *see also*, American University, Kogod School of Business, [2021 Made in America Index](#) (Oct. 15, 2021) (finding in 2021, each of Tesla's vehicles - the Model S, 3, X and Y - ranked in the top 10 and Tesla was the only manufacturer to have representation from its entire portfolio in the top 10).

² Electrek, [Tesla Dominates Car Sales in California with Impressive Growth in 2020 and 2 of Top 5 Best-Selling Cars](#) (Feb. 9, 2022).

³ *See, e.g.*, CleanTechnica, [Tesla Model Y — 2nd Best Selling SUV In California, & Model 3 The 5th Best Selling Car](#) (Aug. 28, 2021).

charging stations to accelerate and support the widespread adoption of its vehicle products.

7. In the United States, Tesla conducts vehicle manufacturing and assembly operations at its facilities in Fremont, California and Austin, Texas, and produces electric drive trains and manufactures advanced battery packs, as well as Tesla's energy storage products, at its Gigafactory Nevada in Sparks. It also builds and services highly automated, high-volume manufacturing machinery at its facility in Brooklyn Park, Minnesota, and operates a tool and die facility in Grand Rapids, Michigan. Tesla produces its solar energy and vehicle charging products at its Gigafactory New York in Buffalo. Tesla's U.S. supply chain spans across more than 40 states.

8. Tesla's American manufactured electric vehicles are sold nationwide including in California and the Section 177 States. As such, Tesla is subject to regulation under the California and the Section 177 States' greenhouse gas emissions and Zero Emission Vehicle standards.⁴

9. Tesla supports strong state vehicle greenhouse gas emissions performance standards for light-duty vehicles. For many years, the California

⁴ See, e.g., Cal. Code Regs. tit. 13, § 1962.2 (Zero-Emission Vehicle Standards); Cal. Code Regs. tit. 13, § 1961.3(a) (Low Emissions Vehicle III greenhouse gas standards).

standards have helped drive investment in electric vehicle manufacturing and technology because those performance standards incentivize manufacturing vehicles with lower carbon emissions and provide a mechanism by which vehicle manufacturers that deploy innovative technologies and out-perform the standards are rewarded as they can earn and sell tradeable compliance credits.⁵ Tesla's required, public SEC filings regularly report quarterly revenue derived from automotive regulatory credit sales, including those occurring in California and other participating states' Zero Emission Vehicle Programs.

10. Moreover, the regulatory certainty embodied in California and the Section 177 States' greenhouse gas performance standards and Zero Emission Vehicle programs have contributed to market conditions that have supported billions of dollars in manufacturing investments by Tesla. Tesla has expanded direct investment in its cutting-edge auto manufacturing, to develop innovative new sustainable energy technologies and products, and to invest in new electric vehicle charging and support infrastructure throughout the United States. Indeed, Tesla continues to make significant investments in advancing electric vehicle, solar, and

⁵ See, e.g., Virginia McConnell, Benjamin Leard & Fred Kardos, Resources for the Future, *California's Evolving Zero Emission Vehicle Program: Pulling New Technology into the Market* at 22-31 (Nov. 2019), https://media.rff.org/documents/RFF_WP_Californias_Evolving_Zero_Emission_Vehicle_Program.pdf (California state Zero Emissions Vehicle credit banking and trading).

battery storage technology with over \$1.1 billion dedicated to research and development (R&D) in 2021 alone.⁶ A recent analysis found that Tesla's R&D investment triples that per vehicle compared to other manufacturers.⁷ For example, in the summer of 2020, Tesla began construction of its newest vehicle and advanced battery manufacturing facility in Austin, Texas. The project will invest over \$10 billion in factory development and create 10,000 new jobs.⁸ In the spring of 2022, Gigafactory Texas began production of Tesla's Model Y crossover and is expected to produce its new Cybertruck. Tesla has continued to innovate with respect to vehicle design to improve the efficiency of its all-electric vehicles, including through significant mass reduction, increased drive unit efficiency, maximizing regenerative braking, and more aerodynamic wheels and tires.⁹

⁶ See Tesla, [SEC Form 10-K](#) (Jan. 26, 2022) at 39; See also, InsideEVs, [Tesla Spends Least On Ads, Most On R&D: Report](#) (Mar. 25, 2022)(reporting that Tesla spends \$2,984 per car on R&D and that such spending is three times the industry average and higher than Chrysler, Ford, and GM's R&D budgets combined).

⁷ See Visual Capitalist, [Comparing Tesla's Spending on R&D and Marketing Per Car to Other Automakers](#) (Oct. 11, 2021) (Tesla is spending an average of \$2,984 per car sold on R&D—often triple the amount of other traditional automakers.)

⁸ See, e.g., [Elon Musk says hiring for Tesla's Austin factory could hit 10,000 workers](#), Austin American-Statesman (Mar. 31, 2021); Reuters, [Musk says Tesla's Texas factory is \\$10 bln investment over time](#) (Dec. 15, 2021).

⁹ Tesla, Model S Long Range Plus: Building the First 400-Mile Electric Vehicle (June 15, 2020), <https://www.tesla.com/blog/model-s-long-range-plus-building-first-400-mile-electric-vehicle>.

11. The regulatory certainty embodied in California and the Section 177 States' standards has also driven Tesla's investment in charging infrastructure. In 2013, Tesla had 8 Supercharger (DC fast charging) stations in North America. Tesla's North American network has grown to include over 3,700 Supercharger Stations with almost 34,000 individual charging stalls.¹⁰ In 2021, Tesla opened 912 new Supercharger locations around the world – an average of two and half new locations every day.¹¹ Tesla's charging investment also includes a network of over 14,000 Destination Charging locations that replicate the convenience of home charging by providing hotels, resorts, and restaurants with Tesla Wall Connectors.¹² Additionally, at its facility in Buffalo, New York, Tesla employs over 1,600 people and manufacturers power electronics equipment for its global Supercharger vehicle charging network, including the North American charging network that supports its vehicles in California and the Section 177 States.

¹⁰ See Tesla, [Supercharger](#); See also, Tesla, [Q1 2022 Update](#) (Apr. 22, 2022) at 6.

¹¹ See InsideEVs, [Tesla: In 2021 Supercharging Uptime Improved To 99.96%](#) (May 10, 2022).

¹² See Tesla, On the Road, <https://www.tesla.com/supercharger>.

12. Tesla opposed EPA's revocation of California's Clean Air Act waiver and participated with the National Coalition for Advanced Transportation in petitioning the D.C. Circuit for review of that 2019 action.¹³

13. When EPA initiated its reconsideration of that 2019 action, Tesla commented individually and through the National Coalition for Advanced Transportation in support of EPA's proposal to reinstate California's Clean Air Act waiver.¹⁴

14. In March 2022, EPA finalized its reinstatement of California's waiver under the Clean Air Act for California vehicle greenhouse gas and Zero Emissions Vehicle emissions standards and confirmed that Section 177 States may continue to adopt and enforce California's standards under the waiver.¹⁵ If Petitioners succeed in obtaining vacatur of EPA's action, this will upset the regulatory certainty on which Tesla and other manufacturers have based their significant investment in electric vehicle manufacturing and infrastructure.

¹³ See *Union of Concerned Scientists v. NHTSA*, No. 19-1230 (D.C. Cir.) (consolidated cases).

¹⁴ See Comments of Tesla, Inc. on the proposed Reconsideration of a Previous Withdrawal of a Waiver of Preemption, Docket No. EPA-HQ-OAR-2021-0257 (July 6, 2021), <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0257-0136>; Comments of the National Coalition for Advanced Transportation on the proposed Reconsideration of a Previous Withdrawal of a Waiver of Preemption, Docket No. EPA-HQ-OAR-2021-0257 (July 6, 2021), <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0257-0131>.

¹⁵ 87 Fed. Reg. 14,332, 14,333 (Mar. 14, 2022).

15. The challenged reinstatement of California's Clean Air Act waiver meaningfully advances Tesla's ability to fulfill its corporate mission of transitioning the world's car fleet to electric vehicles.

16. Tesla's business interests in marketing electric vehicles would be harmed by any decision overturning EPA's reinstatement of California's Clean Air Act waiver and EPA's confirmation of the Section 177 States' authority to adopt California standards.

17. Under the state performance standards at issue, Tesla earns tradable compliance credits that can be sold to underperforming vehicle manufacturers. If Petitioners are successful in their challenge, it will deprive Tesla of these tradeable compliance credits and associated revenues.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed this 9th day of June, 2022.



Joseph Mendelson, III

ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF OHIO, et al.,

Petitioners,

v.

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY and MICHAEL S. REGAN

Respondents.

Case No. 22-1081 (and consolidated cases)

DECLARATION OF O. KEVIN VINCENT

I, O. Kevin Vincent, do hereby declare that the following statements made by me under oath are true and accurate to the best of my knowledge, information, and belief:

1. I am Associate General Counsel, Regulatory & Vehicle Safety at Lucid USA, Inc. (“Lucid”). In that role, I am responsible for regulatory compliance, including complying with both federal and state standards and regulations, including California’s motor vehicle greenhouse gas emissions and zero emission vehicle standards and standards of other states that have adopted vehicle standards identical to California’s under Section 177 of the Clean Air Act (the “Section 177 States”).

2. Lucid is a member of the National Coalition for Advanced Transportation.

3. Lucid's mission is to inspire the adoption of sustainable energy by creating the most captivating electric vehicles, centered around the human experience. The company's first car, the Lucid Air, is a state-of-the-art luxury sedan with a California design underpinned by race-proven technology. The Lucid Air features a luxurious full-size interior space in a mid-size exterior footprint. Customer deliveries of the Lucid Air began in 2021.

4. Lucid's state-of-the-art AMP-1 (Advanced Manufacturing Plant) factory in Casa Grande, Arizona started production in 2021 and already employs over 2000 people. Every Lucid employee receives stock in the company and receives competitive compensation. For example, the average Lucid employee at the Casa Grande, Arizona facility earns 160% of the median income in the Casa Grande area.

5. Lucid supports both federal and state regulatory efforts to adopt and enforce stringent low and zero emission motor vehicle standards to spur investment in electric vehicles and achieve meaningful emission reductions.

6. In 2019 EPA unlawfully purported to revoke a waiver of preemption it had previously granted to California under the Clean Air Act for California's low and zero emission vehicle standards. However, in March 2022, EPA finalized an

action to reinstate the Clean Air Act preemption waiver for California and confirm Section 177 States' authority to adopt and enforce standards identical to California's.¹

7. Lucid sells its American-manufactured electric vehicles across the U.S., including in California and the Section 177 States and is therefore subject to the state standards at issue in these consolidated actions. Because Lucid's electric vehicles outperform the state standards, Lucid benefits from tradable compliance credits as a result of the state standards.

8. Vacatur of EPA's reinstatement of the Clean Air Act waiver of preemption will impair Lucid's interest in these state motor vehicle greenhouse gas emissions standards.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on June 13, 2022.



O. Kevin Vincent

¹ 87 Fed. Reg. 14,332, 14,333 (Mar. 14, 2022).

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF OHIO, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and MICHAEL
S. REGAN,

Respondents.

Case Nos. 22-1081,
and consolidated cases

DECLARATION OF MICHAEL BACKSTROM

I, Michael Backstrom, do hereby declare that the following statements made by me under oath are true and accurate to the best of my knowledge, information, and belief:

1. I am Vice President of Regulatory Affairs at Southern California Edison. I am responsible for the company's Regulatory Affairs, Energy and Environmental Policy, Strategic Planning, and Resource and Environmental Planning and Strategy organizations at the national and state levels, overseeing regulatory strategy and operations and environmental affairs.

2. Southern California Edison is a subsidiary of Edison International, and is headquartered in Rosemead, California. Southern California Edison is one of the nation's largest electric utilities in the United States, serving more than 15 million people in a 50,000-square-mile area of southern California.

3. Edison International is a member of the National Coalition for Advanced Transportation.

4. Southern California Edison is committed to leading the transformation of the electric power industry toward a clean energy future. This electric-led strategy includes utility investment in programs to build and support the expansion of transportation electrification.

5. Southern California Edison supports strong vehicle greenhouse gas emissions standards and California's long-standing, Congressionally-recognized authority to regulate motor vehicle emissions to address its compelling and extraordinary conditions. Southern California Edison believes that California's greenhouse gas and Zero Emission Vehicle standards are critical to achieving air quality and climate goals. As described below, Southern California Edison is actively investing in infrastructure and other programs that support customer adoption of zero emission vehicles and successful implementation of the standards.

6. Southern California Edison has developed a comprehensive and long-term business strategy in which Southern California Edison will play a leadership

role in the electrification of the transportation sector, in order to achieve significant reductions in greenhouse gas and criteria pollutant emissions. This vision is described in Southern California Edison's Pathway 2045 whitepaper, which provides a blueprint for reaching California's ambitious greenhouse gas reduction and carbon neutrality goals.¹

7. Southern California Edison's strategy involves substantial development of electrical infrastructure to support and enable the attainment of state and federal air quality and state climate change goals. These programs also stimulate technology innovation and market competition, enable consumer choice in charging equipment and services, attract private capital investments, and create high quality jobs for the public and our customers.

8. For example, in August of 2020, the California Public Utilities Commission (CPUC) approved Southern California Edison's Charge Ready 2 program, a \$436 million program that will fund the installation of approximately 30-40 thousand new charging ports for light duty vehicles.² This program builds upon Southern California Edison's initial \$22 million Charge Ready pilot in 2016,

¹ Southern California Edison, Pathway 2045 White Paper (Nov. 2019), <https://www.edison.com/home/our-perspective/pathway-2045.html>.

² CPUC, Decision Authorizing Southern California Edison's Charge Ready 2 Programs <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M346/K230/346230115.PDF> (2020).

supporting the installation of approximately 1,300 light-duty electric vehicle charge ports. Through Charge Ready Transport, Southern California Edison is investing \$356 million in installing infrastructure to support nearly 8,500 medium- and heavy-duty vehicles.

9. In order to successfully plan, develop, obtain approval, and execute programs like these, Southern California Edison must rely on consistent implementation of regulatory programs, including the California Air Resources Board's standards and regulations.

10. Through the National Coalition for Advanced Transportation, Southern California Edison's parent company, Edison International, participated in the United States Environmental Protection Agency's ("EPA") regulatory process for reconsidering its 2019 action revoking California's Clean Air Act waiver of preemption for its low emission vehicle and zero emission vehicle standards. The National Coalition for Advanced Transportation submitted comments in support of EPA's proposal to reinstate the waiver of preemption EPA granted to California under the Clean Air Act for these standards.³

³ Comments of the National Coalition for Advanced Transportation on the proposed Reconsideration of a Previous Withdrawal of a Waiver of Preemption, Docket No. EPA-HQ-OAR-2021-0257 (July 6, 2021), <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0257-0131>.

11. In March 2022, EPA finalized its action, reinstating California's waiver of preemption under the Clean Air Act and confirming Section 177 States' authority to adopt and enforce California's standards under the waiver.⁴

12. Petitioners' effort to invalidate EPA's reinstatement of California's waiver undermines much-needed regulatory certainty. Regulatory uncertainty and disruption of existing and effective regulatory programs that inform and influence transportation electrification planning lead to unnecessary transaction and planning costs by causing confusion in the market.

13. Southern California Edison believes that clear, consistent regulatory programs controlling emissions from mobile sources are critical to achieving vital air quality and climate goals, and ensuring that Southern California Edison can effectively plan and implement infrastructure programs to support these goals and our customers. If successful, the litigation seeking to undo EPA's recent action could impair these efforts.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on June 9, 2022.


Michael Backstrom

⁴ 87 Fed. Reg. 14,332, 14,333 (Mar. 14, 2022).