

ORAL ARGUMENT NOT YET SCHEDULED**No. 20-1168**

(consolidated with Nos. 20-1145, 20-1167, 20-1169,
20-1173, 20-1174, 20-1176, at 20-1177)

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

NATURAL RESOURCES DEFENSE COUNCIL, *et al.*,

Petitioners,

v.

ANDREW WHEELER,
Administrator, U.S. Environmental Protection Agency,

Respondent,

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

Petitioners challenge a final action of the Environmental Protection Agency (“EPA”) 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 Rule purports to carry out EPA’s duties under Section 202 of the Clean Air Act, 42 U.S.C. § 7521, to promulgate standards to limit greenhouse gas emissions from light-duty motor vehicles, emissions EPA has found endanger public health and welfare. In the Final Rule, EPA rescinded

existing vehicle emission standards for light-duty motor vehicles of Model Years 2021-2025, and promulgated new, weaker standards for Model Years 2021-2026.

Petitioners also challenge a preliminary determination that was part of EPA's decision-making process resulting in the Final Rule. The "Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles," 83 Fed. Reg. 16,077-87 (Apr. 13, 2018) ("Revised Final Determination"), withdrew EPA's January 2017 Final Determination under 40 C.F.R. § 86.1818-12(h) that EPA's greenhouse-gas emissions standards for light-duty motor vehicles of Model Years 2022-2025 are "appropriate," and announced a new decision that those standards are "not appropriate." That action is subject to review as part of the review of the Final Rule because it was a "preliminary, procedural, or intermediate action" relating to the rescission and replacement of EPA's vehicle emission standards for greenhouse gases and subject to judicial review as part of review of the Final Rule. 5 U.S.C. § 704.

Without waiving their right to modify these issues or raise additional ones, petitioners intend to raise the following issues with regard to EPA's Final Rule and Revised Final Determination:

1. Whether EPA relied upon unreasonable interpretations of the Clean Air Act, breached statutory duties, and disregarded statutory limitations.

2. Whether EPA violated its statutory duty to exercise independent judgment and apply its own technical expertise in assessing and prescribing vehicle emissions standards.
3. Whether the Final Rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law because EPA failed adequately to consider and reasonably weigh the statutory factors, other relevant factors and the record evidence before it; improperly considered or gave undue weight to other factors; and failed to consider important aspects of the problem.
4. Whether the technical analyses offered in support of the Final Rule are arbitrary, capricious, inconsistent with the record, inexplicably different from EPA's prior findings or analysis, and otherwise not in accordance with law, including, without limitation, EPA's analyses of safety impacts; costs, effectiveness, deployment, and feasibility of technology; compliance costs; pollution impacts; fleet turnover and fleet footprint; vehicle miles traveled and associated impacts; impacts on consumers; reference case vehicle fleet; supply chain effects; and macroeconomic impacts on, among other things, employment.
5. Whether EPA's analysis of regulatory costs and benefits is arbitrary, capricious and unsupported by the record evidence.

6. Whether in the Final Rule EPA failed to provide a reasoned explanation and record basis for disregarding or reversing its prior findings and policy decisions, including that it would be practical and feasible for automakers to meet the existing standards for Model Years 2021-2025 at reasonable cost, and that maintaining the existing standards would comply with statutory pollution-reduction goals, providing significant benefits for public health and welfare, and saving consumers money on fuel, and without having material adverse effects on the automobile industry.
7. Whether EPA failed to provide a reasonable opportunity for public comment on the proposed rule; failed to consider the full record before the agency; failed to make critical record material available for review and public comment; relied upon data, methodology, and major legal interpretations that were not set forth in the proposed rule; and failed to respond to significant public comments, criticisms, and data.
8. Whether EPA violated statutory requirements and acted arbitrarily and capriciously by relying upon data and methodologies that were not subjected to peer review.
9. Whether EPA Acted arbitrarily and capriciously by failing to consider and address impacts of the final Rule on minority and low-income communities.

10. Whether EPA failed to comply with the Endangered Species Act and regulations under it.

11. Whether the Revised Final Determination was unlawful and arbitrary and capricious because:

(a) the Administrator failed to provide adequate explanation, record support, or analysis for the Revised Final Determination that the emissions standards for Model Years 2022-2025 are not “appropriate.”

(b) the Administrator disregarded the evidentiary record and findings upon which the January 2017 Final Determination was based, failed adequately to justify reversals of prior positions, and failed to provide an adequate justification for withdrawing the January 2017 Final Determination.

(c) it violated applicable statutes and regulations, including the requirements in 40 C.F.R. § 86.1818-12(h) that the Administrator base his decision on a record that has been made available for public review and comment and provide “in detail” assessments of enumerated factors relevant to his determination.

Respectfully submitted,

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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