

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

CLEAN FUELS DEVELOPMENT
COALITION; ENVIRONMENTAL
AND ENERGY STUDY INSTITUTE;
THE FARMERS' EDUCATIONAL &
COOPERATIVE UNION OF
AMERICA D/B/A NATIONAL
FARMERS UNION; FARMERS
UNION ENTERPRISES, INC.;
GLACIAL LAKES ENERGY LLC;
GOVERNORS' BIOFUELS
COALITION; MONTANA
FARMERS UNION; NORTH
DAKOTA FARMERS UNION;
SIOUXLAND ETHANOL LLC;
SOUTH DAKOTA FARMERS
UNION; and URBAN AIR
INITIATIVE, INC.

Petitioners,

v.

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY; UNITED STATES
DEPARTMENT OF
TRANSPORTATION; and
NATIONAL HIGHWAY TRAFFIC
SAFETY ADMINISTRATION

Respondents.

No. 20-1230

PETITIONERS' NON-BINDING STATEMENT OF THE ISSUES

Pursuant to the Court's July 1, 2020 Order, Petitioners Clean Fuels Development Coalition, Environmental and Energy Study Institute, The Farmers' Educational & Cooperative Union of America d/b/a National Farmers Union, Farmers Union Enterprises, Inc., Glacial Lakes Energy, LLC, Governors' Biofuels Coalition, Montana Farmers Union, North Dakota Farmers Union, Siouxland Ethanol, LLC, South Dakota Farmers Union, and Urban Air Initiative, Inc. (collectively "Petitioners") submit the following non-binding statement of issues to be raised in this proceeding to challenge the final agency actions of the United States Environmental Protection Agency ("EPA") and the National Highway Traffic Safety Administration ("NHTSA") published together as 85 Fed. Reg. 24,174 (Apr. 30, 2020) and titled "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks." In the Final Rule, EPA and the NHTSA require automakers to increase the fuel efficiency of their cars and light trucks by 1.5% per year - a much less stringent standard than the 5% annual increases mandated by the prior administration and existing regulation. The net effect of the Final Rule will be to increase the overall emissions from the US transportation industry and delay and disincentivize development and adoption of renewable fuels and cleaner, more efficient vehicles in exchange for modest short-term cost savings, based on dubious cost-benefit analysis and consumer preference

assumptions. Because the new standards fail to consider and address the role that ethanol and higher octane fuels and vehicles can play in achieving improved fuel efficiency and emission reductions and fail to account for and address harmful pollution from toxic aromatics/VOCs in gasoline, EPA's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the Clean Air Act, Administrative Procedure Act, or other laws.

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

1. Whether the Final Rule must be set aside as arbitrary and capricious because EPA and 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;
2. 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, EPA's consideration and treatment of the deployment, effectiveness, feasibility, costs, availability, and emission and pollution impacts of renewable fuels including mid-level ethanol blends; existing and future fleet profiles including, without limitation, the wider use of MY2001 and newer light duty vehicles certified for E15 and vehicles

otherwise compatible with mid-level ethanol blends; the harms and cost associated with existing aromatic-laden fuels; impacts on public health, climate and the natural environment; impacts on consumers; impacts on minority and low-income communities; and the deployment, feasibility and effectiveness of higher-octane fuels to improve both fuel economy and tailpipe emissions.

3. Whether, in promulgating the Final Rule, EPA relied on inaccurate data, misleading analysis and modeling that was significantly flawed, while ignoring a substantial record of evidence before it demonstrating that mid-level ethanol blends help to reduce tailpipe emissions and improve fuel and engine efficiency.

4. Whether EPA failed to consider and respond to significant public comments, including, without limitation, the Final Rule's standards' consistency with Title II of the Clean Air Act, including Section 202(l); the feasibility and impacts of moving to higher octane, lower carbon fuels and vehicles; and comments on incentives for automobile manufacturers who make flex-fuel vehicles (FFVs).

5. Whether EPA 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.

Dated: July 31, 2020

Respectfully submitted,

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¹ Application for admission forthcoming.

CERTIFICATE OF SERVICE

I, Jonathan W. Cuneo, hereby certify that on this 31st day of July, 2020, a true and correct copy of the foregoing Agency Docketing Statement was served on all counsel of record in this case by means of the Court's CM/ECF system. Additionally, a true and correct copy of the foregoing Agency Docketing Statement was served via First Class U.S. Mail on the following:

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/s/ Jonathan W. Cuneo
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