ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COALITION FOR RESPONSIBLE REGULATION, INC., ET AL., Petitioners v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Respondent.	No. 10-1092 (consolidated with Nos. 10-1094, 10-1134, 10-1143, 10-1144, 10-1152, 10-1156, 10-1158, 10-1159, 10-1160, 10-1161, 10-1162, 10-1163, 10-1164, 10-1166, 10-1172, and 10-1182)

INTERVENORS ALLIANCE OF AUTOMOBILE MANUFACTURERS' AND ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS' OPPOSITION TO MOTIONS FOR STAY

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The Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers (collectively, "Auto Intervenors") respectfully submit this opposition to the motions for stay of the final rule of the United States Environmental Protection Agency ("EPA"), "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule," 75 Fed. Reg. 25,324 (May 7, 2010) (the "Tailpipe Rule").

I.
INTRODUCTION

Beginning in January 2009, the Obama Administration worked closely with the State of California, environmental organizations, and the automobile industry to construct a framework for a coordinated "Joint National Program" that would address motor vehicle greenhouse gas ("GHG") emissions and fuel economy. This coordination was necessary because motor vehicle fuel economy and GHG emissions largely overlap, as there is an inverse mathematical relationship between emissions of the principal GHG (carbon dioxide, or CO2), measured in grams of CO2 emitted per mile, and fuel economy, measured in miles per gallon of gasoline consumed. The Joint National Program was created by the Tailpipe Rule and separate fuel economy regulations adopted by the National Highway Traffic Safety Administration ("NHTSA").

The Joint National Program allows manufacturers to comply with a harmonized national program rather than—as was the case before and could likely

be again if the Tailpipe Rule is stayed—a patchwork of federal standards and separate state standards that had been promulgated by California and adopted by 13 other states. In a system where the federal standards apply in one group of states and state standards apply in a second group of states, a manufacturer would have to sell one fleet of vehicles that achieves X miles per gallon to comply with the federal standards, and a separate fleet of vehicles that achieves Y miles per gallon to comply with the state standards. Doing so imposes significant compliance burdens and costs. The Joint National Program relieves manufacturers from such a patchwork, and allows them instead to meet a single set of standards nationwide.

Petitioners/movants are entities concerned about EPA regulations aimed at controlling stationary-source (*i.e.*, factory or utility) emissions of GHGs. They have attacked four separate EPA rules. Their complaint with the Tailpipe Rule has nothing to do with its regulatory substance as applied to mobile sources, but rather with its collateral consequences for regulation of stationary sources under separate rules.[1] Yet, two of the motions for stay—filed by the State of Texas and the Coalition for Responsible Regulation, *et al.* ("CRR")—seek to stay the Tailpipe Rule's effects not only as to these other stationary source rules but also as to

[1] Auto Intervenors have intervened only in the cases challenging the Tailpipe Rule.

mobile sources. Such an overbroad stay would, as explained below, avoid no harm to stationary-source emitters while causing substantial harm to automobile manufacturers, who, weeks away from the commencement of the first model year regulated by the Joint National Program (2012), would likely have to switch production and sales plans entirely to comply with a resultant patchwork of overlapping and contradictory state and national standards.

The third motion for stay, filed by the National Association of Manufacturers ("NAM") *et al.*, takes a narrower approach. NAM proposes that the Tailpipe Rule be *partially* stayed, that is, solely as to its effects on stationary sources, with the Rule left intact insofar as it regulates mobile sources. To the extent that such a partial stay is necessary and appropriate to redress the complained-of harm to the stationary-source emitters, it would do so without substantially harming automobile manufacturers, dealers, and auto-buying consumers.

Auto Intervenors defer to Respondent EPA's arguments why the movants have failed to meet the heavy burden of showing that they are entitled to a stay. If, however, this Court is inclined to grant any stay, Auto Intervenors submit that this Court should exercise its discretion and grant a stay that is no broader than the approach proposed by NAM *et al.*

II.
THE TAILPIPE RULE PROVIDES SIGNIFICANT BENEFITS TO THE AUTOMOBILE INDUSTRY

The Tailpipe Rule constitutes one half of the rulemaking adopted jointly by EPA and NHTSA to establish coordinated motor vehicle GHG emission standards and fuel economy standards for the 2012 through 2016 model years. *See* 75 Fed. Reg. 25,324 (May 7, 2010). These rules were the first of their kind, and resulted from an intensive cooperative effort between the Obama Administration, the State of California, environmental organizations, and the automobile industry.

Articulating the significant benefits provided by the Joint National Program to the auto industry, Carol M. Browner, Assistant to the President for Energy and Climate Change, proclaimed at its announcement that the Program "is not only good news for consumers who will save money at the pump, but this policy is also good news for the auto industry which will no longer be subject to a costly patchwork of differing rules and regulations."[2] The adoption of the Joint National Program meant that vehicle manufacturers would no longer be required to comply with a complex morass of multiple and inconsistent regulations governing motor

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[2] *See* Office of the Press Secretary, *President Obama Announces National Fuel Efficiency Policy* (available at http://www.whitehouse.gov/the_press_office/President-Obama-Announces-National-Fuel-Efficiency-Policy/) (last accessed on October 27, 2010).

vehicle fuel economy and greenhouse gas emissions that had arisen at both the state and the federal level.

A. Before The Enactment Of The Joint National Program, Automobile Companies Were Facing Multiple And Inconsistent Fuel Economy And Carbon Dioxide Emission Regulations

Historically, the regulation of motor vehicle fuel economy has been the sole province of the federal government. Since 1978, Corporate Average Fuel Economy ("CAFE") standards have been established by NHTSA under the Energy Policy and Conservation Act of 1975, 49 U.S.C. §§ 32901, *et seq*. ("EPCA"). These fuel economy standards effectively regulate carbon dioxide emissions because "[f]uel consumption and CO2 emissions from a vehicle are two 'indissociable' parameters" such that "fuel economy is directly [inversely] related to emissions of greenhouse gases such as CO2." *See* Average Fuel Economy Standards For Light Trucks Model Years 2008-2011, 71 Fed. Reg. 17,566, 17,659 (Apr. 6, 2006). Given the direct inverse relationship, it is possible to translate a fuel-economy standard into a CO2 emissions standard, and vice versa, through fairly simple mathematical calculations.

The CAFE standards provide manufacturers with flexibility because they do not set fuel economy requirements that must be met by each individual vehicle, but rather are based on the average fuel economy of vehicles sold throughout the country by an individual manufacturer. 49 U.S.C. § 32902. Congress adopted this

nationwide fleet-average approach to "ensure wide consumer choice" by leaving "maximum flexibility to the manufacturer" to produce a "diverse product mix" while meeting the applicable nationwide CAFE standards. S. Rep. No. 94-179, at 6 (1975); *Center for Auto Safety v. NHTSA*, 793 F.2d 1322, 1338, 1339 (D.C. Cir. 1986). This flexibility is extremely important to manufacturers because the market demands of consumers in a particular state or geographic area can vary significantly across the county. The approach of nationwide fleet averaging enables manufacturers to sell different mixes of vehicles in various states or regions as long as the nationwide fleet complies with the applicable standards. *See, e.g.,* Declaration of Michael Love (National Manager of Regulatory Affairs for Toyota Motor Sales, U.S.A., Inc.) ¶ 15; Declaration of Sarah C. Hiple (Program Manager, Regulatory Compliance at Nissan North America, Inc.), ¶ 7.

Despite the federal government's long history of regulating of motor vehicle fuel economy (and resulting CO2 emissions) in this manner, the State of California decided that it wanted to do more to address global climate change, and in 2002 the California legislature enacted Assembly Bill 1493, *see* Cal. Health & Safety Code § 43018.5, directing the California Air Resources Board ("CARB") to adopt regulations aimed at reducing greenhouse gas emissions from new passenger cars and light trucks. Pursuant to this mandate, CARB promulgated regulations in 2004 requiring that each manufacturer's fleet of cars and light trucks sold in California

meet increasingly stringent GHG emission standards that phase in between the 2009 and 2016 model years, *see* Cal. Code Regs. tit. 13, § 1961.1. California subsequently sought a waiver of Clean Air Act preemption from EPA under 42 U.S.C. § 7543(b), as it (alone among the states) is entitled to do for vehicle emissions standards. California's standards for the 2012 through 2016 model years were significantly more stringent than the then-applicable CAFE standards, and effectively required manufacturers to produce a separate fleet of high fuel economy vehicles just for the California market. For instance, CARB expected that manufacturers would have to design vehicles that incorporated "technology packages" that would increase fuel economy and thereby reduce CO2 emissions. *See Staff Report: Initial Statement of Reasons* ("ISOR") at 59, 63-67 (available at http://www.arb.ca.gov/regact/grnhsgas/isor.pdf) (last accessed Oct. 27, 2010).

Thirteen other states and the District of Columbia subsequently adopted the California regulations under Section 177 of the Clean Air Act, 42 U.S.C. § 7507 (allowing other states to adopt California's vehicle tailpipe emissions regulations that receive a waiver from EPA), thus requiring the motor vehicle fleets sold in those jurisdictions—some with exceptionally small vehicle fleets—also to meet these new stringent California standards based on the vehicles sold in each state. Consequently, for the first time, manufacturers were faced with having to balance not only their national fleets of vehicles for CAFE compliance, but also 14 separate

state fleets—one each in California and the 13 Section 177 States—to comply with fuel economy and GHG regulations.

B. State GHG Emissions Regulations Would Impose Significant New Compliance Burdens On Automobile Companies

Having to comply simultaneously with these state and federal laws—what NHTSA has called a "patchwork of state and federal rules governing fuel economy and GHG emissions that were inadequate, uncertain, potentially conflicting, and in a constant state of flux"[3]—threatened to saddle manufacturers with tremendous costs and compliance burdens. In addition to imposing much more stringent standards and a compliance framework that is entirely different from federal regulations, implementing the California GHG Regulations would deprive manufacturers of the flexibility of nationwide fleet-averaging provided under the CAFE program. Balancing the smaller and more homogeneous fleets found in each of California and the Section 177 states is inherently more difficult and costly than it is to balance a fleet across the entire nation. *See* Declaration of R. Thomas Brunner (Manager of Vehicle Compliance and Analysis at Mercedes-Benz, USA, LLC) (filed separately under seal), ¶ 9; Hiple Decl., ¶ 8. Moreover, because the

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[3] *See* Letter from O. Kevin Vincent to Office of Senator Diane Feinstein (Feb. 19, 2010) (available at http://media.washingtonpost.com/wp-srv/special/climate-change/documents/post-carbon/NelsonLetter022510.pdf) (last accessed Oct. 27, 2010).

California GHG Regulations would have been applied on a state-by-state basis based on the mix of vehicles sold in each state, their effective stringency would vary widely between different states, depending on customer preferences and the resultant compliant product mix necessarily sold in each of these states. Love Decl., ¶ 7. Manufacturers were therefore faced with the possibility of having to develop different product and technology plans for each state, thus severely complicating vehicle distribution throughout the country. *Id.*

Adjusting to an entirely new regulatory regime requires extensive lead time, and manufacturer product and distribution plans are therefore set many years in advance of a particular model year. Love Decl., ¶ 9; Declaration of Reginald R. Modlin (Director of Regulatory Affairs at Chrysler Group, LLC), ¶ 6. Indeed, the need for this lead time is recognized in both EPCA and the Clean Air Act. Under EPCA, CAFE standards must be established at least 18 months before the beginning of the applicable model year, and Section 177 of the Clean Air Act requires that state emission standards be adopted at least two years before the start of the applicable model year. Because the fuel economy of (and the resulting GHG emissions from) a motor vehicle goes to the very heart of its design and manufacture, the industry has long sought a uniform, nationwide approach to regulating these matters that provides the regulatory certainty needed for advance product planning.

The automobile industry therefore challenged the California GHG Regulations on federal preemption grounds. *See Green Mountain Chrysler Plymouth Dodge v. Crombie*, 508 F.Supp.2d 295, 342 n.49 (D. Vt. 2007), *Central Valley Chrysler-Jeep, Inc. v. Goldstene*, 529 F. Supp. 2d 1151, 1158 (E.D. Cal. 2008). The industry also opposed California's request to EPA for a waiver of Clean Air Act preemption. As of 2009, the outcome of these challenges was still undecided, and there was consequently uncertainty concerning whether the industry would have to comply with the California GHG Regulations. District court decisions rejecting the industry's preemption challenges were on appeal, and EPA was reconsidering its earlier decision denying California's waiver request. *See* California State Motor Vehicle Pollution Control Standard, 74 Fed. Reg. 7,040 (Feb. 12, 2009).

C. The Joint National Program Resolved These Conflicts And Provided The Industry With A Single Set Of Fuel Economy And Greenhouse Gas Emission Standards Set At The Federal Level

The Joint National Program resolved this regulatory uncertainty and provided the automobile industry with a uniform, nationwide approach to regulating fuel economy and GHG emissions. The development of this Program was announced at a White House Rose Garden ceremony on May 19, 2009, and the various stakeholders signed "Commitment Letters" outlining its broad contours. Under this Program, EPA and NHTSA adopted coordinated regulations

establishing motor vehicle fuel economy and GHG emissions standards, and, starting with the 2012 model year, California and the Section 177 States modified their regulations to provide that compliance with the federal standards is deemed to satisfy compliance with the state standards. For its part, the automobile industry agreed to dismiss pending challenges to state GHG regulatory programs.

Contrary to the movants' argument, EPA's Tailpipe Rule and NHTSA's CAFE standards are not "redundant." CRR Br. 46. For the Court's purposes, the key difference is that California's regulations defer to compliance with the federal GHG program adopted by EPA, but they do not defer to compliance with the federal CAFE program (see Section III.B, *infra*). So a stay of the federal GHG regulations raises the prospect of renewed enforcement of state-by-state GHG standards, even if the CAFE program remains in place. *See also* Respondent's Br. 13 (Respondent's description of differences between EPA's GHG program and NHTSA's CAFE program).

III.
THE BALANCING OF THE EQUITIES WEIGHS HEAVILY AGAINST STAYING THE IMPLEMENTATION OF THE TAILPIPE RULE

A. If A Stay Is Warranted, It Should Be Narrowly Tailored To Redress The Complained-Of Harm Without Unnecessarily Causing Substantial Harm To Other Parties

This Court considers four factors when determining whether to grant a stay pending review: "(1) the likelihood that the moving party will prevail on the

merits; (2) the prospect of irreparable injury to the moving party if relief is withheld; (3) the possibility of substantial harm to other parties if relief is granted; and (4) the public interest." D.C. Cir. R. 18(a)(1); *accord* D.C. Cir. Handbook of Practice & Internal Procedures 33 (2010) (citing *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921 (D.C. Cir. 1958)). Thus, before granting a stay, this Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter v. Natural Resources Defense Council, Inc.*, 129 S.Ct. 365, 376 (2008) (internal quotation marks omitted).

A stay, like other types of injunctions, "must be narrowly tailored to remedy the specific harm shown." *State of Nebraska Dep't of Health & Human Servs. v. Dep't of Health & Human Servs*., 435 F.3d 326, 330 (D.C. Cir. 2006) (internal quotation marks omitted); *accord Nat'l Treasury Employees Union v. Yeutter*, 918 F.2d 968, 977 (D.C. Cir. 1990). Consistent with these principles, this Court has granted partial stays pending appeal. *See, e.g.*, *Consumer Fed. of Am. v. U.S. Dep't of Health & Human Servs.*, 83 F.3d 1497, 1500 (D.C. Cir. 1996); *Common Cause v. Nuclear Regulatory Comm'n*, 674 F.2d 921, 925-26 (D.C. Cir. 1982); *W. Union Telephone Co. v. F.C.C.*, 665 F.2d 1112, 1116-17 (D.C. Cir. 1981).

Respondent has offered a number of arguments as to why a stay should be denied, including arguments with respect to Movants' likelihood of success on the merits and with respect to the possibility of irreparable harm if a stay were to be denied. Auto Intervenors will not recapitulate those arguments here. If, however, this Court is inclined to grant a stay, the stay should, as explained below, be narrowly tailored solely to stationary-source effects of the Tailpipe Rule. Such a narrowly tailored stay will redress the harm about which petitioners complain, while avoiding the substantial harm that may be caused if the Tailpipe Rule were stayed as to mobile sources.

Specifically, a broader stay could disable the Joint National Program that was adopted so that automobile manufacturers could comply with a single set of coordinated national standards. As declarants from six automobile manufacturers have stated in the declarations attached hereto or filed separately under seal, if the Tailpipe Rule were to be stayed and if manufacturers were consequently required to comply with the California GHG Regulations in addition to the federal CAFE program, they would be facing significant additional compliance burdens and costs. With the first regulated model year (2012) mere weeks away[4] and with manufacturers having made extensive compliance plans focused on the Joint

[4] A model year can begin as early as January 2 of the previous calendar year.

National Program's standards, substantial harm would be caused to manufacturers and consumers were an overbroad stay granted and manufacturers suddenly forced to comply with both state and national standards.

B. Staying The Implementation Of The Tailpipe Rule Would Result In Significant Harm To The Automobile Industry.

Staying the implementation of the Tailpipe Rule would result in significant harm to the auto industry because, as NHTSA recently pointed out, without it, manufacturers face the significant risk that "California and the States that adopted the California standards could move forward to enforce standards that are inconsistent with the Federal standards, thus creating confusion, encouraging renewed litigation, and driving up the cost of compliance to automobile manufacturers and consumers alike." Letter from O. Kevin Vincent to Office of Senator Diane Feinstein (Feb. 19, 2010), *see* note 3, *supra*.

This outcome results from the manner in which California amended its regulations to allow for the national compliance option. When the Joint National Program was adopted, the California regulations were amended to provide that "[f]or the 2012 through 2016 model years, a manufacturer may elect to demonstrate compliance with [the California GHG Regulations] by demonstrating compliance with the National greenhouse gas program." Cal. Code Regs. tit. 13, § 1961.1(a)(1)(A)(ii). The term "National greenhouse gas program" is defined as "the national program that applies to new 2012 through 2016 model year passenger

cars, light-duty trucks, and medium-duty passenger vehicles as proposed by the U.S. Environmental Protection Agency at 74 Fed. Reg. 49454 (September 28, 2009) and adopted by EPA on April 1, 2010 …'" *Id.* § 1961.1(e). Thus, the literal language of the California regulations can be read as making the implementation of the Tailpipe Rule a necessary prerequisite for manufacturers to qualify for the national compliance option to satisfying the California regulations.

Losing the national compliance option would have significant negative consequences for the industry. The 2012 model year can begin as early as January 2, 2011, and manufacturer product and distribution plans for that model year are already set in stone. *See* Declaration of Robert Bienenfeld (Senior Manager of Environment and Energy Strategy at American Honda Motor Co., Inc.), ¶ 13; Love Decl., ¶ 19; Modlin Decl., ¶ 10; Declaration of Brian Rampp (Vice President - Delegate Corporate Strategy for Environment and Transportation at BMW of North America, LLC) (filed separately under seal), ¶ 11. Indeed, the 2013 model year is just over a year away, and given the industry's inherent need for lead time, manufacturers have already determined how many of each 2013 model vehicles they intend to produce and sell based on the requirements of the Joint National Program; planning for the 2014 model year is also well underway. Love Decl., ¶ 19; Rampp Decl., ¶ 7. Relying on the implementation of the Joint National Program, manufacturers have developed national distribution, marketing,

and sales plans. Love Decl., ¶ 19; Brunner Decl., ¶ 10; Bienenfeld Decl., ¶ 14. If the industry were to be deprived of the national compliance option accorded by the Tailpipe Rule, then manufacturers would stand to lose this investment because they would suddenly have to overhaul their product and distribution plans to comply with the GHG Regulations in California and the Section 177 States. Brunner Decl., ¶ 11.

Moreover, the standards that would be imposed in California and the Section 177 States are more stringent than the GHG emissions that would be allowable under the federal program. For example, the federal standard for the 2012 model year equate to a GHG emission rate of 295 grams per mile for the combined car and light truck fleet, and a fuel economy of 29.7 mpg. In contrast, the California program would require a GHG emission rate for the combined car and light truck fleet of 271 g/mi and an equivalent 32.4 mpg. *Compare* 75 Fed. Reg. at 25,330-331 *with* Comparison of Greenhouse Gas Reductions for the United States and Canada Under U.S. CAFE Standards and California Air Resources Board Greenhouse Gas Regulations at 8 (available at http://www.arb.ca.gov/cc/ccms/reports/pavleycafe_reportfeb25_08.pdf) (last accessed Oct. 27, 2010). Some manufacturers have determined that they would find it extremely difficult to meet the California standards with their planned fleets, and accordingly they might have to restrict sales of models with lower fuel

economy in California and the Section 177 States. *See, e.g.,* Love Decl., ¶ 20; Modlin Decl., ¶¶ 20-21.

Finally, because of structural differences between the California GHG Regulations and the federal CAFE program, having to comply with both would greatly increase manufacturers' compliance burdens. For instance, owing to recent changes in the CAFE program, the federal CAFE standards are based on a "footprint" approach. Under this approach, a fuel economy "target" is established for each model of vehicle based on the model's "footprint," which is calculated by multiplying the vehicle's track width (the distance between the centerline of the tires) and wheelbase (the distance between the centers of the axles). Pursuant to the formula, models with a smaller "footprint" will have a higher, more stringent, fuel economy target, and models with a larger "footprint" will have a lower target. The California regulations do not employ the footprint approach, but instead establish a single fuel economy standard that is applicable to each of the two classifications of vehicles and that each manufacturer must meet, no matter the footprint. Being forced to comply with both of these differing schemes would impose additional costs on manufacturers. *See* Brunner Decl., ¶ 7; Hiple Decl., ¶ 11. After developing plans to comply with the Tailpipe Rule for the upcoming model year based on the footprint approach, manufacturers would have to develop

a separate compliance plan for California using a completely different metric. *See* Brunner Decl., ¶ 7; Love Decl., ¶ 21.

Accordingly, movants' statement that "no one will be harmed by the stay," *see* CRR Br. 79, is simply and patently incorrect and betrays movants' ignorance of the Tailpipe Rule's importance to the automobile industry. Declarants from six manufacturers have attested to the fact that staying the implementation of the rule would result in tremendous hardship to their companies.

C. Denying The Stay Or Imposing A Partial Stay Avoids Harm To The Automobile Industry.

The above-described harms to the automobile industry from a stay of the Tailpipe Rule as to mobile sources can be avoided by denying the requested stay. If the Court were inclined to grant some form of relief, then the above-described harms could be avoided by imposing the more limited stay advocated by the NAM Movants. The purported harms that Texas and the CRR Movants (as well as the NAM Movants) have identified flow exclusively from the effect of the application of the challenged rules to *stationary sources*. *See* Texas Motion at 29-42; CRR Motion at 61-68. No party has identified any harm—let alone irreparable harm—attributable to the application of the Tailpipe Rule to *mobile sources*. As one Petitioner succinctly put it: "The problem occurs on the stationary source side …." Peabody Energy Co.'s Response In Support Of Motions For Stay at 5 (Sept. 30, 2010). Accordingly, any stay of the Tailpipe Rule should be limited to its effect on

stationary sources. *See, e.g.*, *State of Nebraska*, 435 F.3d at 330; *Nat'l Treasury Employees Union*, 918 F.2d at 977.

Indeed, the NAM Movants—which represent many of the stationary sources that would be regulated under regulations supposedly triggered by the Tailpipe Rule—have demonstrated that it is not necessary to stay implementation of the Tailpipe Rule with respect to mobile sources to prevent the alleged harms to stationary sources.[5] They request that "this Court issue a narrowly tailored partial stay to preserve the status quo and prevent these rules from taking effect on countless stationary sources that EPA has not assessed, while allowing EPA to proceed with its CAA efforts to control GHG emissions from cars and light duty trucks." NAM Br. 1-2. Unlike the other stay movants, the NAM Movants implicitly recognize that a full stay of the Tailpipe Rule would disrupt EPA's regulation of GHG emissions from mobile sources. The NAM Movants also recognize that their proposal would preserve the status quo of (i) the Joint National

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[5] The NAM Movants do not seek to stay EPA's Endangerment Finding because the relief they seek for stationary-source emitters can be granted while keeping that finding intact. The Endangerment Finding does not by itself impose any obligations on any party, but rather is a prerequisite to EPA's regulation of GHG emissions under the Clean Air Act. If this Court is inclined to stay the Endangerment Finding based on harms to stationary-source emitters, the Court should grant only a partial stay of that Finding insofar as it is applicable to direct regulations of stationary sources (along the lines of the partial stay suggested by the NAM Movants with respect to the Tailpipe Rule).

Program for mobile sources (which is already in place and around which the industry has made compliance and product plans years into the future) and (ii) no new regulation for stationary sources (which have not yet been subjected to new regulation triggered by the Tailpipe Rule). *See* NAM Br. 12 (partial stay would "enable EPA to realize its goals of imposing GHG emission limits on cars while preserving the status quo for stationary sources").

IV.
CONCLUSION

This Court should deny any stay of the Tailpipe Rule. Alternatively, if this Court is inclined to grant a stay of the Tailpipe Rule, it should limit that stay to the regulatory effects of the Tailpipe Rule on stationary sources.

Date: November 1, 2010

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CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of November, 2010, the foregoing Opposition to Motions to Stay was electronically filed with the United States Court of Appeals for the District of Columbia via the Court's Electronic Case Filing System.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I also hereby certify that on November 1, 2010, I served one copy of the foregoing motion by First-Class Mail, postage prepaid, for delivery to the following non-CM/ECF participants:

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