



High Court Extends Deadline For Most Parties To Challenge GHG Rules

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Chief Justice John Roberts has extended by 30 days the deadline for most parties planning to ask the Supreme Court to overturn EPA's greenhouse gas (GHG) regulatory package -- though at least one party, the Utility Air Regulatory Group (UARG), will file its petition for a writ of certiorari by the original March 20 deadline.

The parties that sought and won a 30-day extension to April 19 say they want time to coordinate their efforts. The litigants are seeking to overturn a ruling from the U.S. Court of Appeals for the District of Columbia Circuit in *Coalition for Responsible Regulation, et al. v. EPA, et al.*, where the court upheld EPA's finding that GHGs from vehicles endanger public health and welfare, first-time fuel economy and tailpipe rules, and "tailoring" and "timing" rules implementing first-time GHG limits for some stationary sources' air permits.

Opponents of the EPA rules unsuccessfully sought en banc review of the consolidated case, though two appellate judges -- Janice Rogers Brown and Brett Kavanaugh -- wrote strong dissents late last year seen as helping a high court appeal.

Roberts, who oversees cases from the D.C. Circuit, approved the first extension in response to a request by the U.S. Chamber of Commerce on March 7.

He also March 8 extended the deadline for the American Chemistry Council (ACC) in response to its March 8 request, and then approved other extension requests March 12, 13 and 14. "The requested extension is warranted in light of the number of parties seeking review of the consolidated judgment below and to ensure a unified briefing schedule for all parties," the ACC application says.

A number of other groups also joined the ACC filing, including the American Frozen Food Institute, the American Fuel and Petrochemical

Manufacturers, the American Iron and Steel Institute, the American Petroleum Institute, the National Association of Manufacturers, the National Oilseed Producers Association and the Portland Cement Association.

Other parties winning deadline extensions in response to their applications include the Coalition for Responsible Regulation and Competitive Enterprise Institute, (CEI) the Energy Intensive Manufacturers Working Group, the Southeastern Legal Foundation and the state of Texas.

In its request for an extension, the legal foundation points to the Brown and Kavanaugh dissents to urge the high court to eventually agree to hear the case. “The dissents of Judges Brown and Kavanaugh emphasize the extraordinary breadth of the regulatory authority being claimed by EPA, and the dubious legal premises upon which EPA’s claim rests in the absence of an express statutory authorization. They both conclude that EPA’s GHG regulations and their tortured legal premises implicate fundamental balance of power concerns surrounding the scope and power of the administrative state,” the filing says.

Additional Time

The Coalition and CEI filing notes that they “intend to submit separate petitions for certiorari, and will file as soon as is practicable, but for two reasons respectfully request additional time to submit those petitions. First, multiple, interconnected rulemakings are at issue, and counsel would benefit from additional time to review relevant legal precedents and the voluminous underlying administrative record.

“Second, several other parties to the D.C. Circuit proceedings have expressed interest in submitting their own petitions for certiorari, and counsel would benefit from time to coordinate with these potential petitioners and amici.”

The manufacturers' request is similar, noting that they too want to “facilitate coordination among counsel and ensure a unified briefing schedule for all petitioners and the respondents.”

Texas in its filing says, “The additional time would permit counsel to more fully develop and effectively present the relevant issues and arguments to the Court.”

The only group expected to file on the March 20 deadline is UARG. One UARG source confirms the group still intends to do so.

But the American Farm Bureau Federation may also have to file at the original deadline rather than the April 19 extension because it missed the 10-day requirement to file a request to extend time, and only filed its deadline extension application March 18. As of press time, its request had not been approved.

Additionally a second source says if the Supreme Court does not immediately grant the farm bureau's request, then it will be forced to file on March 20 or risk EPA successfully seeking its dismissal as a party. "People are trying to coordinate and not overwhelm the court with a billion pages," the source notes. -- Dawn Reeves (dreeves@iwpnews.com)