

Re: In re Citizens for Reliable and Safe Highways, No. 02-1363 (D.C. Cir.)

### **SETTLEMENT AGREEMENT**

In the above referenced action, petitioners have filed a petition for a writ of mandamus seeking to compel respondents to issue six final rules that petitioners allege Congress required respondents to promulgate by particular dates in the past. In an effort to resolve at least some of the issues presented by that petition without further litigation, petitioners and respondents, through their undersigned attorneys, agree as follows:

(1) Petitioners and respondents shall jointly file the attached motion to partially stay the above-styled proceedings during the pendency of the rulemakings described in paragraphs (2) - (6) below. If the partial stay is granted by the Court, petitioners shall not seek to have the stay lifted and shall not otherwise seek to prosecute the stayed portion of their pending petition for a writ of mandamus unless respondents fail to meet one or more of the deadlines set forth in paragraphs (2) - (6) below. If the partial stay is denied, in whole or in part, this settlement agreement shall be void in its entirety, and the parties agree that it shall be neither enforceable nor admissible in this action.

(2) Respondents shall publish in the Federal Register a final rule regarding commercial truck drivers' hours of service and other fatigue-related issues, as required by section 408 of the Interstate Commerce Commission Termination Act of 1995, codified as a note to 49 U.S.C. 31136, no later than May 31, 2003. The effective date of that rule shall be no later than sixty days after the date of publication.

(3) Respondents shall publish in the Federal Register a final rule regarding minimum training requirements for drivers of longer combination vehicles, as required by section

4007(b)(2) of the Intermodal Surface Transportation Efficiency Act of 1991, 49 U.S.C. 31307(b), no later than March 30, 2004. The effective date of that rule shall be no later than sixty days after the date of publication. Respondents shall publish in the Federal Register a notice of proposed rulemaking (NPRM), in accordance with the requirements of the Administrative Procedure Act, with regard to this rule no later than September 1, 2003.

(4) Respondents shall publish in the Federal Register a final rule regarding background information and safety performance history of commercial drivers, as required by section 114 of the Hazardous Materials Transportation Authorization Act of 1994, Pub. L. 103-311, 108 Stat. 1677 (August 26, 1994), and by section 4014 of Pub. L. 105-178, 112 Stat. 411 (June 9, 1998), no later than March 30, 2004. The effective date of that rule shall be no later than sixty days after the date of publication.

(5) Respondents shall publish in the Federal Register a final rule regarding training standards for entry-level drivers of commercial motor vehicles, as required by section 4007(a) of the Intermodal Surface Transportation Efficiency Act, Pub. L. 102-240, 105 Stat. 2151 (Dec. 18, 1991), no later than May 31, 2004. The effective date of that rule shall be no later than sixty days after the date of publication. Respondents shall publish in the Federal Register an NPRM, in accordance with the requirements of the Administrative Procedure Act, with regard to this rule no later than November 1, 2003.

(6) Respondents shall publish in the Federal Register a final rule regarding permits for the transportation of hazardous materials, as required by section 8 of the Hazardous Materials Transportation Uniform Safety Act of 1990, Pub. L. 101-615, 104 Stat. 3257-58, 49 U.S.C. 5109(h), no later than June 30, 2004. The effective date of that rule shall be no later than sixty

days after the date of publication. If the Secretary deems it necessary to publish an NPRM or Supplemental Notice of Proposed Rulemaking (SNPRM) with regard to this rule, respondents shall do so in accordance with the requirements of the Administrative Procedure Act no later than December 1, 2003.

(7) Respondents shall issue periodic reports concerning the progress that they have made in promulgating the final rules described in paragraphs (2) - (6) above. These periodic reports shall be issued every 60 days beginning on April 1, 2003, and at a minimum must state the date by which respondents expect that each NPRM, SNPRM, and final rule referenced above will be published in the Federal Register, and the date by which respondents expect to submit each rule to the Office of Management and Budget. In addition, these periodic reports shall set forth (a) the progress made by respondents in meeting their obligations under this settlement agreement and (b) any matter known to respondents that will likely significantly affect respondents' compliance with the deadlines set forth in paragraphs (2) - (6), above. With respect to items (a) and (b) immediately above only, respondents are not obligated to include in any report information contained in any agency record that would be exempt from disclosure under the Freedom of Information Act or any privileged intraagency or interagency communications. These periodic reports shall be served on petitioners' counsel and the court mediator, if any, and shall be filed with the Court.

(8) This settlement agreement shall be binding on the parties and specifically enforceable by the Court. This agreement may be made public by the parties once (a) it is finalized and signed by all parties or their counsel and (b) the Court grants the joint motion for partial stay referenced in paragraph (1). If respondents fail to meet any of the deadlines set forth in

paragraphs (2) - (6) above, petitioners have the right, under this agreement, to pursue the following remedies in the alternative in this stayed action: 1) to seek specific enforcement of all of the deadlines agreed to by respondents in this agreement, 2) to revive any stayed portions of their petition for a writ of mandamus in the above referenced case, and 3) to pursue any other statutory or common-law remedies that would have been available absent this agreement. The parties agree that this agreement shall be admissible in any such proceeding and that the Court shall have the power to specifically enforce this agreement and all of the deadlines agreed to by respondents in this agreement. The remedies described above shall be petitioners' sole remedies under this agreement for any breach thereof, and do not include the remedy of contempt. Petitioners reserve the right to seek a contempt sanction only if respondents violate an order of the Court.

(9) Petitioners reserve the right to seek payment of attorney's fees, expenses, and/or costs incurred in association with their petition for a writ of mandamus under any relevant statutory provision or court rule. However, respondents reserve the right to oppose any request for such fees, expenses, and/or costs.

(10) Any deadline set forth above will be void and unenforceable to the extent that the underlying statutory duty to issue the regulation(s) at issue is eliminated.

(11) If and when respondents complete the rulemakings described in paragraphs (2) - (6) above, petitioners shall withdraw the portion of the petition for a writ of mandamus stayed pursuant to the joint motion for partial stay referenced in paragraph (1) above, subject to the reservations of rights in paragraph (9) above.

---

Jonathan H. Levy  
(202) 353-0169

---

Scott R. McIntosh  
(202) 514-4052

Attorneys, Appellate Staff, Civil Division  
United States Department of Justice  
601 D Street, NW, Room 9541  
Washington, DC 20530

Counsel for all respondents

---

Brian M. McLaughlin  
(202) 366-8773

Acting Chief Safety Officer  
Federal Motor Carrier Safety Administration  
United States Department of Transportation  
400 7th Street, SW  
Washington, DC 20590

---

Marka Peterson  
(202) 588-7713

---

Brian Wolfman  
(202) 588-7730

Public Citizen Litigation Group  
1600 20th Street, N.W.  
Washington, D.C. 20009

Counsel for all petitioners

FEBRUARY 2003