Nos. 23-1067 and 23-1068

In the Supreme Court of the United States

STATE OF OKLAHOMA, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

PACIFICORP, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
KATE KONSCHNIK
Acting Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
AIMEE W. BROWN
Assistant to the Solicitor General
ALEX J. HARDEE
ALEXANDRA L. ST. ROMAIN
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

DIMPLE CHAUDHARY
Acting General Counsel
SUSANNAH WEAVER
Deputy General Counsel
GAUTAM SRINIVASAN
Associate General Counsel
MATTHEW MARKS
Deputy Associate General Counsel
JEANHEE HONG
ROSEMARY H. KABAN
DANIEL P. SCHRAMM
EMILY SEIDMAN
Attorneys
Environmental Protection Agency
Washington, D.C. 20004

QUESTION PRESENTED

The United States Environmental Protection Agency (EPA) took a final action under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, to disapprove 21 States' plans for implementing national ozone standards. EPA determined that those state plans would not adequately "prohibit[] * * * emissions activity within the State" from "contribut[ing] significantly to nonattainment in, or interfer[ing] with maintenance by, any other State" of national ambient air-quality standards. 42 U.S.C. 7410(a)(2)(D)(i)(I). The question presented is as follows:

Whether EPA's disapproval action is subject to review only in the D.C. Circuit under 42 U.S.C. 7607(b)(1), which channels to that court petitions to review EPA final actions that are "nationally applicable" or are "based on a determination of nationwide scope or effect."

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OPINION BELOW

The opinion of the court of appeals (23-1067 Pet. App. 1a-19a, 23-1068 Pet. App. 1a-17a), is reported at 93 F.4th 1262.

JURISDICTION

The judgment of the court of appeals was entered on February 27, 2024. The petitions for writs of certiorari were filed on March 28, 2024, and were granted on October 21, 2024. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the appendix. App., *infra*, 1a-36a.

STATEMENT

A. Legal Background

1. When a petitioner seeks review of a "final action" taken by the Environmental Protection Agency (EPA) under the Clean Air Act (CAA), 42 U.S.C. 7401 *et seq.*, Section 7607(b)(1) of Title 42 provides for direct court of appeals review of the petitioner's challenge. To determine which circuit has exclusive venue over the challenge, Section 7607(b)(1) separates EPA's final actions into three categories.

First, challenges to certain specified actions or to "any other nationally applicable regulations promulgated, or final action taken," must be filed "only in the United States Court of Appeals for the District of Columbia." 42 U.S.C. 7607(b)(1). Second, challenges to certain specified actions, including an action "approving or promulgating any implementation plan," "or any other final action * * * under [the CAA] (including any denial or disapproval [under Title I of the CAA]) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit." *Ibid.* Third, "[n]otwithstanding" the sentence directing review of a locally or regionally applicable action to "the appropriate circuit," challenges to such a locally or regionally applicable action "may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination." *Ibid.*

Congress adopted this three-prong structure in the Clean Air Act Amendments of 1977, Pub. L. No. 95-95, 91 Stat. 685, 776. The predecessor to Section 7607(b)(1) authorized direct court of appeals review only of certain specifically enumerated EPA actions. 42 U.S.C. 1857h-5(b)(1) (1970). EPA actions involving "national primary or secondary ambient air quality standard[s]," "emission standard[s]," or other specified standards or controls were reviewable only in the D.C. Circuit, while EPA's actions "in approving or promulgating" a state or federal "implementation plan" were reviewable only in "the appropriate circuit." *Ibid.* That division reflected Congress's view that EPA actions that are "national in scope" should receive "even and consistent national application," which would be accomplished through centralized D.C. Circuit review. S. Rep. No. 1196, 91st Cong., 2d Sess. 41 (1970) (1970 Senate Report). By contrast, Congress viewed EPA actions approving or promulgating "implementation plans which run only to one air quality control region" as appropriately reviewed "in the U.S. Court of Appeals for the Circuit in which the affected air quality control region, or portion thereof, is located." *Ibid.* At that time, the venue provision did not include a catchall for other nationally or locally or regionally applicable actions, nor did the provision specifically reference EPA actions that are based on a determination of nationwide scope or effect. Rather, final actions that the CAA venue provision did not specifically address were reviewable only by a district court exercising federal-question jurisdiction. See *Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578, 584 (1980).

In 1977, Congress amended the statute to authorize direct court of appeals review of all EPA "final actions" under the CAA. Congress achieved that result by add-

ing the catchall categories for the first two subsets of final actions, and by adding the third category of locally or regionally applicable actions that are based on a determination of nationwide scope or effect. The House Report accompanying the amendment explained that the revision would "provide[] for essentially locally, statewide, or regionally applicable rules or orders to be reviewed in the U.S. court of appeals for the circuit in which such locality, State, or region is located." H.R. Rep. No. 294, 95th Cong., 1st Sess. 323 (1977) (1977 House Report). "On the other hand," the report explained, venue would lie only in the D.C. Circuit "if an action of the Administrator is found by him to be based on a determination of nationwide scope or effect (including a determination which has scope or effect beyond a single judicial circuit)." *Id.* at 324.

2. The EPA action at issue here is a final action disapproving 21 States' implementation plans for reducing ozone pollution transported between multiple States. 88 Fed. Reg. 9336 (Feb. 13, 2023). Under the CAA, EPA must set and periodically revise national ambient air quality standards (NAAQS) for particular pollutants, including ozone, to protect public health and the environment. See 42 U.S.C. 7408, 7409. The CAA authorizes the States, in the first instance, to develop state implementation plans to achieve and maintain those NAAQS, and to submit those plans to EPA within three years after the promulgation of a new or revised NAAQS. 42 U.S.C. 7410(a).

While most CAA requirements for state plans focus on intrastate air quality, see, *e.g.*, 42 U.S.C. 7410(a)(2)(A)-(C) and (E)-(M), the CAA recognizes that "[a]ir pollution is transient, heedless of state boundaries," and may be "transported by air currents" from upwind to downwind

States, *EPA* v. *EME Homer City Generation, L. P.*, 572 U.S. 489, 496 (2014). When air pollution travels beyond the originating State's boundaries, that State is "relieved of the associated costs," which are "borne instead by the downwind States, whose ability to achieve and maintain satisfactory air quality is hampered by the steady stream of infiltrating pollution." *Ibid.* The problem is particularly acute for ozone, which travels long distances. See *West Virginia* v. *EPA*, 362 F.3d 861, 865 (D.C. Cir. 2004). To combat cross-border pollution, the CAA requires each State's plan to prohibit in-state emissions that will "contribute significantly to nonattainment" or "interfere with maintenance" of healthy air quality in any other State. 42 U.S.C. 7410(a)(2)(D)(i)(I). This statutory requirement is known as the Good Neighbor Provision. See *EME Homer*, 572 U.S. at 498.

When a State submits its plan to EPA, the agency must assess the plan to determine whether it meets the CAA's requirements, including whether it prohibits any significant contribution to nonattainment in other States. If particular plans do not satisfy that requirement, EPA must disapprove those plans and promulgate federal plans to implement the requirements. 42 U.S.C. 7410(c)(1), (k)(2) and (3).

B. Facts And Proceedings Below

1. a. In 2015, EPA revised the NAAQS for ozone to set a more stringent standard, triggering the requirements for States to develop implementation plans. 80 Fed. Reg. 65,292 (Oct. 26, 2015). EPA reviewed various state plan submissions using a four-step framework it had developed for assessing Good Neighbor obligations for ozone. See, *e.g.*, 76 Fed. Reg. 48,208, 48,248-48,249 (Aug. 8, 2011); see *EME Homer*, 572 U.S. at 524 (rejecting challenges to this framework). Under that frame-

work, EPA assessed whether, in 2023 (the last full year that emissions reductions could be implemented before the relevant attainment date), a State would contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in a downwind State. 88 Fed. Reg. at 9340-9341.

At step one, EPA used nationwide air quality modeling and monitoring data to identify "receptors"—locations that were expected to have difficulty complying with the 2015 ozone NAAQS in 2023. 88 Fed. Reg. at 9341-9342; J.A. 234a-236a. At step two, EPA identified the sources of ozone and applied a screening threshold to determine whether a particular State would contribute more than a de minimis amount to those downwind receptors. 88 Fed. Reg. at 9342, 9371-9375. If so, the State was considered "linked" to that receptor. *Ibid.* At step three, EPA evaluated whether the state plans defined what "amounts" of a linked State's contribution to receptors were "significant," and therefore must be prohibited under the CAA. 42 U.S.C. 7410(a)(2)(D)(i); see *EME Homer*, 572 U.S. at 519-520. At step four, EPA evaluated whether the state plans contained enforceable control measures to prohibit those "significant" emissions. 88 Fed. Reg. at 9343.

Many States generally follow this framework in their own analyses, although EPA does not require it. Regardless of the approach States take, EPA must independently evaluate whether each submission complies with the Good Neighbor Provision, and this framework provides "reasonable organization to the analysis of the complex air quality challenge of interstate ozone transport." 88 Fed. Reg. at 9338.

b. After reviewing the various state plan submissions, EPA issued a final rule in which it concluded that

21 States' submissions—each of which proposed no additional emissions reductions to meet the more stringent ozone standard—must be disapproved because they did not comply with the Good Neighbor Provision. 88 Fed. Reg. at 9338. EPA found that the 21 States had failed to justify their conclusions that their emissions do not "significant[ly] contribut[e]." *Id.* at 9354; see *id.* at 9354-9361. Petitioners Oklahoma and Utah were among those 21 States. *Id.* at 9359-9360.

Many of the 21 States offered substantially similar reasons for asserting that they were not required to implement additional emissions reductions. For example, many States (including Oklahoma and Utah) contested EPA's reliance on updated, 2016-based modeling in assessing air quality conditions and pollution contribution. 88 Fed. Reg. at 9357, 9359-9360, 9365-9367; see J.A. 62a-63a. Many States (including Oklahoma and Utah) had adopted a threshold for identifying potentially significant contributions to downwind-State pollution levels that was higher than the 1% threshold that EPA found appropriate at step two. 88 Fed. Reg. at 9372-9373 & n.311; see J.A. 20a, 44a-45a. Many States (including Oklahoma and Utah) asserted that their own contributions to air-quality problems in downwind States were not significant because other countries and States also contributed pollution to the same downwind States. 88 Fed. Reg. at 9355-9360, 9378 & n.331; see J.A. 22a-23a, 47a-51a. And many States (including Oklahoma and Utah) asserted that existing controls and expected future reductions would be sufficient to address their Good Neighbor obligations. 88 Fed. Reg. at 9354-9360; see J.A. 23a-26a, 51a-57a.

In disapproving the States' submissions, EPA made uniform determinations to address many similar argu-

ments that multiple States had asserted in support of their plans. See J.A. 184a. With respect to EPA's use of updated modeling data, EPA explained that the agency had used "the most current and technically appropriate information" to evaluate the state submissions nationwide, which allowed the agency to assess States' ozone levels and contributions to ensure equitable results, using the highest quality analytics. 88 Fed. Reg. at 9366-9367; see *id.* at 9380-9381. In discussing the initial threshold for screening the States' contributions at step two, EPA determined that a contribution threshold equal to 1% of the revised ozone NAAQS was appropriate to "ensure[] both national consistency across all states and consistency and continuity with [EPA's] prior interstate transport actions for other NAAQS." *Id.* at 9371; see *id.* at 9371-9374. In addressing arguments regarding relative contributions, EPA explained that contributions from other States or countries are "typically not relevant in assessing whether a downwind state has an air quality problem, or whether an upwind state is significantly contributing to that problem," because each State is "obligated to eliminate [its] own 'significant contribution'" to downwind States. *Id.* at 9378. And in considering the adequacy of existing control measures or anticipated reductions, EPA explained that existing control measures "are already reflected in the future year projected air quality results" of the agency's nationwide modeling, which showed continued contributions despite those controls, and that anticipated reductions must be incorporated into the plan itself in order to be creditable. *Id.* at 9343; see *id.* at 9367, 9376-9377.

c. After explaining its bases for disapproving the submissions, EPA addressed judicial review of the ac-

tion. EPA explained that its rulemaking was "'nationally applicable'" under Section 7607(b)(1) because the agency was disapproving submissions "for 21 states located across a wide geographic area" by "applying a uniform legal interpretation and common, nationwide analytical methods with respect to the [CAA's] requirements * * * concerning interstate transport of pollution." 88 Fed. Reg. at 9380.

"In the alternative," EPA found that the "action is based on a determination of 'nationwide scope or effect.'" 88 Fed. Reg. at 9380. EPA explained in particular that, in disapproving the 21 state plans, the agency was implementing "a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S." *Ibid.* EPA further explained that it had evaluated the plans "with an eye to ensuring national consistency and avoiding inconsistent or inequitable results among upwind states * * * and between upwind and downwind states." *Id.* at 9381. EPA also observed that "consolidated review of this action in the D.C. Circuit will avoid piecemeal litigation in the regional circuits, further judicial economy, and eliminate the risk of inconsistent results for different states." *Ibid.*; see J.A. 181a-186a.

2. Various States and industry groups challenged EPA's disapproval action with respect to 12 state plans. Those challenges were filed in the D.C. Circuit and in seven regional circuits.[1] Petitioners Oklahoma and

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[1] See, *e.g.*, *West Virginia* v. *EPA*, No. 23-1418 (4th Cir. Apr. 14, 2023); *Texas* v. *EPA*, No. 23-60069 (5th Cir. Feb. 14, 2023); *Kentucky* v. *EPA*, No. 23-3216 (6th Cir. Mar. 13, 2023); *Arkansas* v. *EPA*, No. 23-1320 (8th Cir. Feb. 16, 2023); *Missouri* v. *EPA*, No. 23-

Utah (State petitioners), as well as eight industry participants (Industry petitioners) within those States, filed petitions for review in both the Tenth and D.C. Circuits.[2] In the Tenth Circuit, EPA moved to transfer venue to the D.C. Circuit or to dismiss for improper venue. Pet. App. 8a.[3] A motions panel stayed the disapproval action as to the state plans submitted by Oklahoma and Utah, and it referred the motion to dismiss or transfer venue to the merits panel. *Id.* at 10a-11a.

A unanimous Tenth Circuit merits panel granted EPA's motion and transferred the petitions to the D.C. Circuit. Pet. App. 1a-19a. The court explained that, under the "plain text" of Section 7607(b)(1), "whether a petition for review belongs in the D.C. Circuit turns exclusively on the nature of the challenged agency action," not on "the scope of the petitioner's challenge." *Id.* at 12a.

The court of appeals concluded that, "[o]n its face," the disapproval action is nationally applicable. Pet. App. 12a. The court emphasized that the action disapproves state plans "from 21 states across the country—

1719 (8th Cir. Apr. 13, 2023); *ALLETE, Inc.* v. *EPA*, No. 23-1776 (8th Cir. Apr. 14, 2023); *Nevada Cement Co.* v. *EPA*, No. 23-682 (9th Cir. Apr. 14, 2023); *Utah* v. *EPA*, No. 23-9509 (10th Cir. Feb. 13, 2023); *Oklahoma* v. *EPA*, No. 23-9514 (10th Cir. Mar. 2, 2023); *Alabama* v. *EPA*, No. 23-11173 (11th Cir. Apr. 13, 2023); *Nevada* v. *EPA*, No. 23-1113 (D.C. Cir. Apr. 14, 2023).

[2] See *Utah* v. *EPA*, No. 23-1102 (D.C. Cir. Apr. 13, 2023); *Oklahoma* v. *EPA*, No. 23-1103 (D.C. Cir. Apr. 13, 2023); *Oklahoma Gas & Elec. Co.* v. *EPA*, No. 23-1105 (D.C. Cir. Apr. 14, 2023); *Tulsa Cement LLC* v. *EPA*, No. 23-1106 (D.C. Cir. Apr. 14, 2023); *Western Farmers Elec. Coop.* v. *EPA*, No. 23-1107 (D.C. Cir. Apr. 14, 2023); *PacifiCorp* v. *EPA*, No. 23-1112 (D.C. Cir. Apr. 14, 2023).

[3] Unless otherwise noted, all references in this brief to the "Pet. App." are to the State petitioners' petition appendix in No. 23-1067.

spanning eight EPA regions and ten federal judicial circuits—because those states all failed to comply with the good-neighbor provision." *Ibid.* The court further explained that, in the disapproval action, EPA had "applied a uniform statutory interpretation and common analytical methods" to examine the "overlapping and interwoven linkages between upwind and downwind states in a consistent manner." *Id.* at 12a-13a.

Petitioners argued that EPA's disapproval action should be treated for venue purposes as multiple individual actions, each applying to a single State. The court of appeals rejected that contention, noting that the text of Section 7607(b)(1) "directs courts to consider only the face of the 'final action.'" Pet. App. 13a. The court therefore viewed it as irrelevant that EPA "could have chosen to issue standalone" disapprovals for each of the 21 States. *Ibid.*

The court of appeals recognized that motions panels of the Fourth, Fifth, and Sixth Circuits had recently denied EPA's motions to transfer petitions challenging the disapproval action. Pet. App. 17a. But the court concluded that those courts had "strayed from § 7607(b)(1)'s text and instead applied a petition-focused approach" that considered the scope of the petitioners' challenge rather than the face of the agency action itself. *Ibid.* The court also noted that the contrary decisions of those other circuits had "generated strong dissents highlighting critical flaws in the majority opinions." *Id.* at 18a.

Because the court of appeals concluded that the disapproval action is nationally applicable, the court declined to address EPA's alternative argument that the rule "is based on a determination of nationwide scope or effect." Pet. App. 19a n.8 (quoting 42 U.S.C. 7607(b)(1)).

The court of appeals transferred the petitions to the D.C. Circuit. That court subsequently ordered that the cases be held in abeyance pending this Court's decision. 23-1103 Order (Nov. 6, 2024). The disapproval action remains stayed as to Oklahoma and Utah pending judicial review.

3. The other regional circuits issued interlocutory motions-panel decisions that either denied transfer or referred the venue question to the merits panel. *West Virginia* v. *EPA*, 90 F.4th 323 (4th Cir. 2024) (denying transfer motion); *Texas* v. *EPA*, No. 23-60069, 2023 WL 7204840 (5th Cir. May 1, 2023) (per curiam) (same); *Kentucky* v. *EPA*, No. 23-3216, 2023 WL 11871967 (6th Cir. July 25, 2023) (same); 23-1320 Order, *Arkansas* v. *EPA* (8th Cir. Apr. 25, 2023) (same); 23-682 Order, *Nevada Cement Co.* v. *EPA* (9th Cir. July 3, 2023) (referring the venue question to the merits panel); 23-11173 Order, *Alabama* v. *EPA* (11th Cir. July 12, 2023) (same).

After this Court granted certiorari, a merits panel of the Sixth Circuit held that it had venue over Kentucky's challenge to EPA's disapproval action, and the court vacated the disapproval of Kentucky's plan on the merits. *Kentucky* v. *EPA*, 123 F.4th 447 (2024).

SUMMARY OF ARGUMENT

Under the plain terms of Section 7607(b)(1), the disapproval action here is reviewable only in the D.C. Circuit. Petitioners' contrary arguments impose atextual requirements and fail to give effect to the provision Congress enacted.

A. Under Section 7607(b)(1), "nationally applicable" EPA final actions are subject to judicial review only in the D.C. Circuit. 42 U.S.C. 7607(b)(1). To determine whether a particular EPA action is "nationally applica-

ble," a court must consider the action on its face. The disapproval action here is "nationally applicable" because it addresses state plan submissions from 21 States in ten federal judicial circuits across the country.

Statutory context confirms that result. Section 7607(b)(1) distinguishes between "nationally applicable" EPA actions, which are subject to review in the D.C. Circuit, and "locally or regionally applicable" actions, which are subject to review in "*the* appropriate circuit." 42 U.S.C. 7607(b)(1) (emphasis added). Congress's use of the definite article indicates that there is only one "appropriate circuit" for review of any particular "locally or regionally applicable" action. When an EPA action applies to entities in multiple circuits, no single regional circuit can be identified as "the" appropriate venue, so the action is properly viewed as "nationally applicable" rather than "locally or regionally applicable."

Section 7607(b)(1)'s legislative history reinforces that conclusion. That history reflects Congress's understanding that any "locally or regionally applicable" action could be reviewed in the regional court of appeals where the affected entity was located. Where affected entities are spread across multiple circuits, however, Congress viewed the D.C. Circuit as the proper venue.

In endorsing the contrary conclusion, petitioners seek to impose atextual restrictions on the availability of D.C. Circuit review. Petitioners argue that, for venue purposes, the Court should treat EPA's disapproval of each State's plan submission as a separate "final action." But this Court has long recognized that agencies have discretion to devise their own procedures, including by aggregating common issues for joint resolution. EPA acted reasonably in taking that approach here. And

in determining the proper venue for challenges to the agency's disapproval action, the Court should focus on the action that EPA actually took, rather than on a hypothetical array of 21 separate, State-specific disapprovals.

Petitioners also assert that the disapproval action must be "locally or regionally applicable" because Section 7607(b)(1) specifically channels to the "appropriate circuit" an EPA action "approving or promulgating any implementation plan," "or any other final action * * * under [the CAA] (including any denial or disapproval [under title I of the CAA]) which is locally or regionally applicable." 42 U.S.C. 7607(b)(1). But that language does not say that a denial or disapproval action *is* locally or regionally applicable. It merely provides that a challenge to any such action "*which is locally or regionally applicable* may be filed only in the . . . appropriate regional circuit" Pet. App. 11a-12a n.5 (quoting 42 U.S.C. 7607(b)(1)) (brackets omitted). Whether a particular denial or disapproval is locally or regionally applicable is for the reviewing court to decide.

B. Even if this Court disregards the framing of the disapproval action and views EPA's disapproval of each State's plan as a distinct "locally or regionally applicable" action, those actions are still reviewable only in the D.C. Circuit. EPA's disapproval of each State's plan was "based on a determination of nationwide scope or effect," and EPA published its finding to that effect in accordance with Section 7607(b)(1)'s requirements. 42 U.S.C. 7607(b)(1).

In linking proper venue to a "determination of nationwide scope or effect," the statutory text focuses on the underlying *reasons* for EPA's final action. 42 U.S.C. 7607(b)(1). The final action must be "based on"

the relevant determinations, indicating that the determinations must be a but-for cause of the agency's final action—forming the core of the agency's analysis. To be nationwide in scope or effect, the core justifications for EPA's final action must be intended to govern the agency's decisionmaking in actions throughout the country, or have legal consequences for entities beyond a single judicial circuit.

The disapproval action here meets those requirements. The disapproval action is based on determinations that have nationwide scope and effect, including: (1) EPA's decision to use updated, 2016-based modeling in assessing air quality conditions and pollution contribution across the country; (2) EPA's decision to apply a 1% contribution threshold to each State to assess whether the State contributed more than a de minimis amount of ozone pollution downwind; (3) EPA's determination that the relative magnitude of other sources' contributions to nonattainment in downwind States could not justify inaction by the upwind States at issue; and (4) EPA's position that a linked State cannot rely on current controls or anticipated emissions reductions that are not incorporated into the state plans themselves. Those determinations formed the core of EPA's analysis in rejecting the state plan submissions, and the agency relied on each determination in acting on Good Neighbor plan submissions across the country.

Statutory history confirms Congress's intent that EPA actions like the disapproval action would be reviewable in the D.C. Circuit. The original 1970 version of the venue provision did not specifically authorize D.C. Circuit review of final actions that are based on a determination of nationwide scope or effect. That statutory gap led to litigation over which circuit qualified as

"the appropriate circuit" when EPA established a uniform legal framework for state implementation plans spanning multiple States in multiple judicial circuits. In amending the statute to its current form, Congress adopted the view expressed by EPA's then-General Counsel, who urged that challenges to such actions should be channeled to the D.C. Circuit to "centralize review" and "tak[e] advantage of [the D.C. Circuit's] administrative law expertise," thereby "facilitating an orderly development of the basic law" that EPA would apply nationwide. 41 Fed. Reg. 56,767, 56,769 (Dec. 30, 1976).

Petitioners contend that the statutory term "determination" refers only to the ultimate disposition of the matter before the agency. But that reading erases the distinction that Section 7607(b)(1) draws between the agency "action" and the "determination" on which the action is "based." 42 U.S.C. 7607(b)(1). Petitioners further observe that EPA *also* considered State-specific facts in disapproving each of the state plan submissions here. But the statute's third prong is not limited to EPA actions that are based *solely* on determinations of nationwide scope or effect. Nor would such a limitation make sense. The third prong of Section 7607(b)(1) comes into play only when the challenged EPA action is "locally or regionally applicable," and such actions almost always will rest at least in part on consideration of local or regional circumstances. *Ibid.*

Petitioners are also incorrect in asserting that EPA's interpretation would authorize D.C. Circuit venue for challenges to every locally or regionally applicable action. The statute imposes meaningful limits on EPA's authority to find that a particular action is "based on a determination of nationwide scope or effect." Courts

should enforce those limits without adding more of their own making.

ARGUMENT

THE D.C. CIRCUIT IS THE APPROPRIATE VENUE FOR REVIEW OF THE DISAPPROVAL ACTION

The CAA's venue provision reflects a clear congressional preference for "uniform judicial review of regulatory issues of national importance." *National Environmental Development Ass'n Clean Air Project* v. *EPA*, 891 F.3d 1041, 1054 (D.C. Cir. 2018) (Silberman, J., concurring). Section 7607(b)(1) specifies two distinct circumstances in which review of nationally significant EPA actions will be channeled to the D.C. Circuit. First, any "nationally applicable" final action is subject to exclusive D.C. Circuit review. 42 U.S.C. 7607(b)(1). Second, even if a challenged final action is "locally or regionally applicable," venue lies exclusively in the D.C. Circuit if that action is "based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination." *Ibid.*

Because EPA's disapproval action addresses the state plan submissions of 21 States across the country, the action is "nationally applicable" within the meaning of Section 7607(b)(1). In the alternative, if (as petitioners urge) the Court views the disapproval action as comprising 21 separate "locally or regionally applicable" state plan disapprovals, those disapprovals are still reviewable only in the D.C. Circuit because they are based on determinations of nationwide scope and effect. EPA's disapproval of each State's plan was grounded in EPA's determinations regarding the proper implementation of the Good Neighbor requirements that are imposed on States throughout the country and that affect

the legal obligations of downwind and upwind States in multiple judicial circuits.

The numerous challenges to the disapproval action, brought in eight judicial circuits across the country, illustrate the outcome that Section 7607(b)(1) was intended to prevent. In arguing for regional-circuit venue, States and industry participants have emphasized the State-specific factors that contributed to EPA's disapproval of various state plans. In briefing their challenges on the merits, however, those States and industry participants have focused primarily on EPA's nationwide determinations, causing eight different courts of appeals to expend resources considering nearly identical challenges.

Both because it governs state plans in multiple judicial circuits, and because it rests on EPA determinations that apply nationwide, the disapproval action is precisely the type of EPA action that Congress regarded as appropriate for centralized D.C. Circuit review. Under petitioners' venue analysis, however, similar EPA actions would continue to spawn parallel challenges in multiple circuits, wasting judicial resources and heightening the risk of inconsistent outcomes. Congress crafted Section 7607(b)(1) to avoid that result, and this Court should affirm the court of appeals' judgment.

A. The Disapproval Action Is Nationally Applicable

The disapproval action addressed the state plan submissions of 21 States located in multiple judicial circuits across the country. It therefore is apparent on the face of the final action that it is "nationally applicable" and subject to review in the D.C. Circuit. 42 U.S.C. 7607(b)(1). Petitioners' contrary arguments lack merit.

1. The text, context, and history of Section 7607(b)(1) make clear that the disapproval action is nationally applicable

Section 7607(b)(1) instructs that a challenge to a "final action" that is "nationally applicable" must be heard in the D.C. Circuit. 42 U.S.C. 7607(b)(1). That language encompasses the disapproval action at issue here because that action applies to state plans in multiple judicial circuits across the country. The statutory context and history confirm Congress's intent that the D.C. Circuit would review challenges to such actions.

a. The term "action" in Section 7607(b)(1) "is meant to cover comprehensively every manner in which an agency may exercise its power." *Whitman* v. *American Trucking Ass'ns*, 531 U.S. 457, 478 (2001). And under Section 7607(b)(1)'s plain text, the choice between D.C. Circuit and regional-circuit venue turns on the nature of the pertinent EPA action rather than on the basis for a particular petitioner's challenge. See, *e.g.*, Pet. App. 12a; *Hunt Ref. Co.* v. *EPA*, 90 F.4th 1107, 1110 (11th Cir. 2024); *Southern Ill. Power Coop.* v. *EPA*, 863 F.3d 666, 671 (7th Cir. 2017); *American Road & Transp. Builders Ass'n* v. *EPA*, 705 F.3d 453, 455 (D.C. Cir. 2013) (Kavanaugh, J.), cert. denied, 571 U.S. 1125 (2014); *ATK Launch Sys., Inc.* v. *EPA*, 651 F.3d 1194, 1197 (10th Cir. 2011). Courts thus must look to the face of the action and determine whether it applies to—or includes "within its scope," *Black's Law Dictionary* 91 (5th ed. 1979) (*Black's*) (defining "apply")—entities "throughout [the] nation," *Webster's Third New International Dictionary of the English Language* 1505 (1976) (*Webster's*) (defining "nationally").

Statutory context sheds further light on what geographic scope an action must have to be "nationally ap-

plicable." Under Section 7607(b)(1), each EPA action is *either* "nationally applicable" *or* "locally or regionally applicable." 42 U.S.C. 7607(b)(1). In distinguishing between those two types of actions, "[t]he text of the statute leaves no room for an intermediate case." *Southern Ill. Power Coop.*, 863 F.3d at 673. If the challenged action is "nationally applicable," the D.C. Circuit is the exclusive forum for judicial review. And unless a "locally or regionally applicable" action is "based on a determination of nationwide scope or effect," it may be challenged "only in the United States Court of Appeals for the appropriate circuit." 42 U.S.C. 7607(b)(1). The statute's use of the definite article—"*the* appropriate circuit," *ibid.* (emphasis added)—indicates that, for any given locally or regionally applicable EPA action, there is only one appropriate regional court of appeals in which to seek review. Cf. *Rumsfeld* v. *Padilla*, 542 U.S. 426, 434 (2004) (explaining that the "use of the definite article" in the federal habeas statute "indicates that there is generally only one proper respondent to a given prisoner's habeas petition").[4]

The existence of a single appropriate court of appeals for this category of EPA actions in turn conveys that a particular action is "locally or regionally applicable" only if it applies to entities that are confined to a single judicial circuit. 42 U.S.C. 7607(b)(1). After all, for an action that applies equally to entities in more than one judicial circuit, no particular court of appeals

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[4] Section 7607(b)(1)'s reference to "*the* appropriate circuit," 42 U.S.C. 7607(b)(1) (emphasis added), contrasts with the preceding subsection, where Congress contemplated the prospect of multiple permissible forums by authorizing "the district court * * * for *any* district in which such person is found or resides or transacts business" to issue certain orders, 42 U.S.C. 7607(a) (emphasis added).

can be identified as "*the* appropriate circuit" for review. *Ibid.* (emphasis added). Thus, any action that spans more than one judicial circuit is properly viewed as "nationally applicable" and subject to review only in the D.C. Circuit. *Ibid.*

b. The history of Section 7607(b)(1) reflects the same understanding. As originally enacted in 1970, the CAA venue provision stated that any action "promulgating any national primary or secondary ambient air quality standard," "emission standard," "standard of performance," or other specified standards or controls, would be reviewable only in the D.C. Circuit. 42 U.S.C. 1857h-5(b)(1) (1970). The provision further specified that any action "approving or promulgating any implementation plan" could be reviewed only in "the appropriate circuit." *Ibid.* Because that venue provision did not specify the proper court for review of the many EPA actions that did not fall within any of the enumerated categories, such actions were reviewable only by district courts exercising federal-question jurisdiction. See p. 3, *supra*.

The actions for which the 1970 statute specified D.C. Circuit review were all "national in scope," and Congress sought to ensure that they received "even and consistent national application." 1970 Senate Report 41. By contrast, Congress viewed EPA actions approving or promulgating "implementation plans which run only to one air quality control region" as amenable to review "in the U.S. Court of Appeals for the Circuit in which the affected air quality control region, or portion thereof, is located," *ibid.*, which the statute referred to as "the appropriate circuit," 42 U.S.C. 1857h-5(b)(1) (1970).

When Congress amended the statute in 1977 to expand the scope of direct court of appeals review, it adopted the same understanding of the limited geographic scope of actions that would be subject to review in "the appropriate circuit." The 1977 House Report explained that the revision would "provide[] for essentially locally, statewide, or regionally applicable rules or orders to be reviewed in the U.S. court of appeals for the circuit in which such locality, State, or region is located." 1977 House Report 323. The House Report contrasted such local actions with nationally relevant actions that extend "beyond a single judicial circuit" and therefore should be subject to centralized D.C. Circuit review. *Id.* at 324. That history reinforces the conclusion that, under the venue provision in its current form, final EPA actions that apply to entities in multiple judicial circuits are reviewable only in the D.C. Circuit.

c. Applying that understanding here, the disapproval action is nationally applicable. EPA "exercise[d] its power" through a single final action that applies to submissions from 21 States across the country, spanning ten federal judicial circuits. *Whitman*, 531 U.S. at 478; see Pet. App. 12a. On a plain-text understanding, the disapproval action is therefore "nationally applicable," and petitioners' challenges to the action can proceed only in the D.C. Circuit. 42 U.S.C. 7607(b)(1).

2. Petitioners' contrary approach to venue is inconsistent with the statutory text

Petitioners argue that the disapproval action is not "nationally applicable" because it should be viewed for venue purposes as 21 separate disapprovals of 21 state plan submissions, each of which is confined to a single judicial circuit. Petitioners further contend that the disapproval action must be locally or regionally applicable

because Section 7607(b)(1) specifically refers to a denial or disapproval as an example of a locally or regionally applicable action. Those arguments lack merit.

a. Petitioners contend (State Br. 22-26; Industry Br. 32-33) that, for purposes of the venue provision, the relevant "final action" is not the single disapproval action applicable to 21 States, but rather 21 separate actions disapproving individual state plans. That argument disregards EPA's decision to consider and rule on the various state plans together, and it is untethered to the statutory text.

Petitioners assert (State Br. 23; Industry Br. 32-33) that each individual plan disapproval must be a reviewable final action because Section 7410 requires "[e]ach State" to develop "*a* plan" to implement the NAAQS and requires EPA to "act[] on *the* submission." 42 U.S.C. 7410(a)(1) and (k)(2) (emphases added). The statute's use of singular articles makes sense because each State submits a single plan, and EPA must assess each State's submission. But neither Section 7410 nor any other CAA provision restricts EPA's ability to consider state plan submissions together and resolve common issues in a single final action.

The Dictionary Act, ch. 71, 16 Stat. 431, instructs that, "unless the context indicates otherwise[,] words importing the singular include and apply to several persons, parties, or things." 1 U.S.C. 1. Here, the context provides no reason to doubt that EPA may evaluate multiple state implementation plans in a single action. Indeed, this Court has long recognized that administrative agencies "should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134,

143 (1940); see *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council*, 435 U.S. 519, 524 (1978) ("[T]his Court has for more than four decades emphasized that the formulation of procedures was basically to be left within the discretion of the agencies to which Congress had confided the responsibility for substantive judgments."). That discretion includes the ability to determine "whether applications should be heard contemporaneously or successively." *Pottsville*, 309 U.S. at 138. Section 7410's reference to individual state plan submissions is an insufficient basis for inferring any constraint on EPA's discretion to group similar plan submissions for joint resolution.

Nor is it relevant that EPA issued separate notices of proposed disapprovals for certain States. See Industry Br. 42-43. Section 7607(b)(1) focuses on the "final action taken," not on a proposed or hypothetical action that EPA could have taken. 42 U.S.C. 7607(b)(1).

There is nothing unusual or problematic about EPA's decision to group the various state plan submissions to decide the common issues that affect States across the country. That approach aligns with Section 7607(b)(1)'s aim to promote national uniformity and with EPA's longstanding practice of resolving similar issues in a single action to ensure consistent treatment. See *ATK Launch Sys.*, 651 F.3d at 1197 (single EPA action promulgating air quality designations for 31 areas across 18 States); *RMS of Ga., LLC* v. *EPA,* 64 F.4th 1368, 1371 (11th Cir. 2023) (single EPA action adjudicating allowance requests and issuing allowances to 32 entities to consume hydrofluorocarbons); *West Virginia Chamber of Commerce* v. *Browner*, 166 F.3d 336, 1998 WL 827315 at *2 (4th Cir. 1998) (Tbl.) (per curiam) (single EPA action declaring that 22 States' implementation plans

were inadequate and required revisions). Indeed, such aggregation generally is encouraged as a means of efficiently adjudicating common issues. See Committee on Adjudication, Administrative Conference of the United States, *Aggregation of Similar Claims in Agency Adjudication* (June 13, 2016), https://perma.cc/2UQS-TJ6F.

Consistent with those principles, for more than 20 years, EPA's practice generally has been to take a single final action covering multiple States when addressing interstate ozone requirements. See, *e.g.*, 63 Fed. Reg. 57,356, 57,480 (Oct. 27, 1998). By contrast, EPA typically acts individually on most other state plan submissions under 42 U.S.C. 7410, because most such submissions do not raise nationally significant issues. See, e.g., *American Road & Transp. Builders*, 705 F.3d at 455 (Kavanaugh, J.); *North Dakota* v. *EPA*, 730 F.3d 750, 757 (8th Cir. 2013), cert. denied, 572 U.S. 1135 (2014). Courts have recognized that an action addressing a single State's implementation plan "is the prototypical 'locally or regionally applicable' action" under Section 7607(b)(1). *American Road & Transp. Builders*, 705 F.3d at 455; see *Sierra Club* v. *EPA*, 47 F.4th 738, 744 (D.C. Cir. 2022). But those decisions do not address EPA actions considering common issues involved in multiple state plans dealing with interstate ozone transport. Whether EPA acts on multiple plan submissions together or instead acts on a single submission, it is the face of the final action that determines the proper venue for review.[5]

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[5] Petitioners allege that EPA has been inconsistent in treating some multistate plan approvals as locally or regionally applicable. See State Br. 28 (citing 85 Fed. Reg. 20,165 (Apr. 10, 2020); 86 Fed. Reg. 68,413 (Dec. 2, 2021)). EPA stated in those actions that chal-

Petitioners' position would require a reviewing court to look beyond the face of the action and potentially substitute a judicial determination of the relevant unit of analysis. But petitioners provide little guidance on how courts would make that determination. Lower courts confronted with such arguments have generally rejected requests to reframe EPA's action and have focused solely on the face of the final agency action. See, *e.g.*, *Chevron U.S.A. Inc.* v. *EPA*, 45 F.4th 380, 387 (D.C. Cir. 2022) (rejecting challenger's argument that EPA's construction and application to a specific context of "nationally applicable provisions of the Clean Air Act" rendered the agency action itself nationally applicable); *Sierra Club*, 47 F.4th at 744 (rejecting challenger's argument that EPA's approvals of Texas's state plans were nationally applicable because EPA had announced a new understanding that would apply in other locations, thereby "effectively amend[ing] the agency's national implementation regulations"); *Southern Ill. Power Coop.*, 863 F.3d at 671 (rejecting challenger's argument that EPA's designations of nonattainment areas were an "amalgamation of many different locally or regionally applicable agency actions"); *RMS of Ga.*, 64 F.4th at 1374 (rejecting challenger's argument that an allocation of allowances among entities should be considered a "document detailing many smaller individual actions").

Focusing on the face of the EPA action has allowed courts and litigants to quickly and efficiently determine where venue lies, preventing wasteful expenditure of resources in resolving threshold issues, and furthering

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lenges should be filed in "the appropriate circuit." See, *e.g.*, 86 Fed. Reg. at 68,420. But EPA did not make any particular finding as to the geographic applicability of those actions, and Section 7607(b)(1) did not require it to do so.

Section 7607(b)(1)'s purpose of "prioritiz[ing] efficiency." *National Ass'n of Mfrs.* v. *Department of Defense*, 583 U.S. 109, 130 (2018). Petitioners' approach, by contrast, would "introduce[] needless uncertainty into the determination of venue, where the need for clear rules is especially acute." *Southern Ill. Power Coop.*, 863 F.3d at 673.

Petitioners contend (State Br. 30-31; Industry Br. 43-45) that permitting EPA to aggregate disapprovals would result in EPA manipulating venue by combining unrelated agency actions. But petitioners do not and could not plausibly claim that EPA engaged in any such arbitrary aggregation here. Nor do they identify any prior instance when EPA has grouped otherwise unrelated local actions for decision and then argued that venue lay in the D.C. Circuit. If the agency ever did so, the principle we advocate here—*i.e.*, that reviewing courts in determining venue should ordinarily accept EPA's framing of its own action—would not preclude a court from rejecting a particular grouping to manipulate venue. Cf. *In re Samsung Electronics Co.*, 2 F.4th 1371, 1377 (Fed. Cir. 2021), cert. denied, 142 S. Ct. 1445 (2022) (noting that courts "have repeatedly assessed the propriety of venue by disregarding manipulative activities of the parties").

b. Petitioners also argue (State Br. 26-29; Industry Br. 33-34) that EPA's disapproval action must be "locally or regionally applicable" because Section 7607(b)(1) specifically assigns EPA actions "approving or promulgating any implementation plan" or "den[ying] or disapprov[ing]" an implementation plan to review in "the appropriate circuit." 42 U.S.C. 7607(b)(1). Petitioners misread the statutory language. See Pet. App. 11a-12a n.5.

The first prong of Section 7607(b)(1) states that various specified EPA actions—such as NAAQS, emissions standards for hazardous air pollutants, and vehicle emissions standards—are reviewable "only in" the D.C. Circuit. 42 U.S.C. 7607(b)(1). The first prong also contains a broad catchall reference to "any other nationally applicable regulations promulgated, or final action taken" under the CAA, and those actions likewise are subject to exclusive D.C. Circuit review. *Ibid.* The first prong's catchall reference to "any *other* nationally applicable" actions, *ibid.* (emphasis added), indicates that Congress viewed the preceding specified actions themselves as nationally applicable.

The second prong has a similar structure, with a list of enumerated actions followed by a catchall. Within the second prong, however, the EPA action at issue here—*i.e.*, a "denial or disapproval * * * under [title I of the CAA]," 42 U.S.C. 7607(b)(1)—is not one of the specific actions referenced *before* the catchall. Rather, the second prong's reference to an EPA "denial or disapproval" is contained in a parenthetical *within* the catchall. See *ibid.* (referring to "any other final action * * * (including any denial or disapproval * * * under [title I of the CAA]) which is locally or regionally applicable"). That language indicates that EPA denials and disapprovals are subject to the same venue analysis that applies to "other final action[s]" generally. Thus, *if* a particular denial or disapproval is "locally or regionally applicable," it is subject to review in "the appropriate circuit." 42 U.S.C. 7607(b)(1). But whether a particular disapproval is locally or regionally applicable is for the reviewing court to decide.

Petitioners argue (State Br. 27) that Section 7607(b)(1)'s second prong specifically identifies EPA

approvals of implementation plans as "locally or regionally applicable," and that "it would make little sense to think that disapprovals of the same implementation plans should be litigated in a different venue." That argument ignores Congress's decision to include plan approvals, but not plan disapprovals, in the list of enumerated EPA actions at the beginning of the second prong. In any event, in listing actions like the "approval or promulgation" of an implementation plan, Congress had in mind actions that "run only to one air quality control region." 1970 Senate Report 41. The second prong's reference to an EPA "action in approving * * * *any* implementation plan," 42 U.S.C. 7607(b)(1) (emphasis added), could reasonably be read as limited to the agency's approval of a single plan. Under that reading, an EPA action approving multiple state plans would fall outside the enumerated categories, so that venue would be governed by Section 7607(b)(1)'s catchalls.

Citing the *ejusdem generis* canon, petitioners suggest (State Br. 25; Industry Br. 31-32) that the disapproval action at issue here cannot fall under the catchall phrase "any other nationally applicable * * * final action" because the enumerated actions preceding that phrase necessarily span the entire country rather than a subset of States. But as the statutory context and history show, see pp. 19-22, *supra*, an action need not apply to all 50 States to be "nationally applicable." And some of the enumerated actions referenced in Section 7607(b)(1)'s first prong can, and regularly do, apply to fewer than 50 States. For example, Section 7607(b)(1)'s first prong refers to the regulation of fuels under Section 7545, even though certain controls or prohibitions apply only in nonattainment areas, which are not pre-

sent in every State. See 42 U.S.C. 7545(h)(1), (h)(6), and (k)(1)(A); see also 42 U.S.C. 7545(k)(10)(D).

Accordingly, courts have deemed various EPA actions that applied in fewer than all 50 States, including nonattainment designations and calls for state implementation plans, to be nationally applicable under Section 7607(b)(1)'s first prong. See, *e.g.*, *ATK Launch Sys.*, 651 F.3d at 1197 (transferring single action in which EPA evaluated States' recommended nonattainment designations and promulgated final designations for 31 areas in 18 States across the country); *Browner*, 1998 WL 827315 at *2 (transferring single action in which EPA evaluated 22 state plans and declared them inadequate, requiring revisions); *Texas* v. *EPA*, No. 10-60961, 2011 WL 710598, at *2 (5th Cir. Feb. 24, 2011) (same as to 13 States). Like those actions, the disapproval action at issue here is nationally applicable on its face. After evaluating submissions from 21 States across the country, EPA ultimately concluded, "based on a common core of nationwide policy judgments and technical analysis," that each State had failed to adequately prohibit emissions that will significantly contribute to downwind nonattainment of the 2015 ozone NAAQS. 88 Fed. Reg. at 9380.

B. The Disapproval Action Is Based On Determinations Of Nationwide Scope Or Effect

Even if the Court concludes that EPA's disapproval action should be viewed for venue purposes as 21 discrete disapprovals of 21 state plans, and that each such disapproval is "locally or regionally applicable," EPA's action still is reviewable exclusively in the D.C. Circuit. EPA's disapproval of each state plan was "based on a determination of nationwide scope or effect," and EPA published a finding to that effect. 42 U.S.C. 7607(b)(1).

1. The disapproval action at issue here was based on determinations of nationwide scope or effect

Under Section 7607(b)(1), a final action that is "locally or regionally applicable" is nonetheless reviewable only in the D.C. Circuit if it is "based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination." 42 U.S.C. 7607(b)(1). EPA published the requisite finding, see 88 Fed. Reg. at 9380-9381, and that finding was correct.

a. A "determination" is a "decision arrived at or promulgated; a determinate sentence, conclusion, or opinion." 4 *The Oxford English Dictionary* 548 (2d ed. 1989) (*OED*); see *Webster's* 616 ("the settling and ending of a controversy esp. by judicial decision"; "the resolving of a question by argument or reasoning"). The text of Section 7607(b)(1) distinguishes between the agency's "final action" and the relevant underlying "determination." 42 U.S.C. 7607(b)(1). A particular EPA action may reflect multiple agency determinations, but by referring to "*a* determination of nationwide scope or effect," Section 7607(b)(1) authorizes D.C. Circuit venue (if EPA publishes the requisite finding) so long as any determination of that kind forms the basis of the action. *Ibid.* (emphasis added).

Requiring that the action be "'based on'" the relevant determination ordinarily "indicates a but-for causal relationship and thus a necessary logical condition." *Safeco Ins. Co. of Am.* v. *Burr*, 551 U.S. 47, 63 (2007). EPA's actions may be—and frequently are—based on multiple determinations, and courts have long accepted such independent causes as adequate. See *Bostock* v. *Clayton County*, 590 U.S. 644, 656 (2020) (noting that "[o]ften, events have multiple but-for causes" that can

be sufficient to trigger liability). Under "the traditional but-for causation standard," causation cannot be defeated "just by citing some *other* factor that contributed to [the] challenged * * * decision." *Ibid.* "So long as" the relevant determination "was one but-for cause of th[e] decision, that is enough to trigger the law." *Ibid.* Thus, under Section 7607(b)(1), the relevant determinations must "lie at the core of the agency action" and cannot be "[m]erely peripheral or extraneous." *Texas* v. *EPA*, 829 F.3d 405, 419 (5th Cir. 2016).

Section 7607(b)(1) further provides that venue may be appropriate in the D.C. Circuit when the relevant determination has "nationwide scope *or* effect." 42 U.S.C. 7607(b)(1) (emphasis added). "Scope" means "the general range or extent of cognizance, consideration, activity, or influence." *Webster's* 2035; see 14 *OED* 672 ("[R]ange of application or of subjects embraced."). "Effect" generally means "something that is produced by an agent or cause." *Webster's* 724; see 5 *OED* 79 ("To bring about"; "to accomplish"). When used with respect to a statute, "effect" refers to "[t]he result * * * which a statute will produce upon the existing law." *Black's* 461-462. Applying that definition in the context of agency action, the "effect" of an agency determination refers to the legal consequences that determination produces. Thus, Section 7607(b)(1) allows for D.C. Circuit review when EPA's final action sets out as a core justification a principle or conclusion that is intended to govern the agency's decisionmaking in actions throughout the country, or when a central rationale for EPA's final action has legal consequences for entities beyond a single judicial circuit.

Under the third prong of Section 7607(b)(1), a locally or regionally applicable action is reviewable in the D.C.

Circuit only if (a) the action "is based on a determination of nationwide scope or effect" *and* (b) EPA "finds and publishes that such action is based on such a determination." 42 U.S.C. 7607(b)(1). When EPA publishes the specified finding, a person who seeks review of the pertinent EPA action may argue that the finding is incorrect and that venue therefore lies in a regional circuit. In such cases, any disputes about the meaning of the phrase "determination of nationwide scope or effect" will present questions of statutory interpretation that courts must decide de novo. See *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369, 400 (2024). But EPA's finding that the statutory standard is satisfied with respect to a particular final action ordinarily will be governed by the arbitrary-and-capricious standard. See 5 U.S.C. 706(2)(A) (requiring application of arbitrary-and-capricious standard to "agency action, findings, and conclusions"); cf. 42 U.S.C. 7607(d)(9)(A) (requiring application of arbitrary-and-capricious standard to particular EPA actions). That deferential standard of review accounts for the fact that EPA has obvious knowledge and expertise with respect to the centrality of the relevant "determination" to the agency's own decisionmaking process. See *Marsh* v. *Oregon Natural Resources Council*, 490 U.S. 360, 376-377 (1989) (applying arbitrary-and-capricious review to a "factual dispute" as to whether "new information undermines conclusions" the agency reached because such a question "implicates substantial agency expertise").

By contrast, nothing in the statute *requires* EPA to "find[] and publish[] that [an] action is based on * * * a determination" of nationwide scope or effect, 42 U.S.C. 7607(b)(1), even when the facts and law would support such a finding. Rather, when EPA declines to publish

such a finding, that decision "is committed to the agency's discretion and thus is unreviewable," *Sierra Club*, 47 F.4th at 745, and it effectively precludes D.C. Circuit venue under Section 7607(b)(1)'s third prong. Thus, for any locally or regionally applicable action that is based on a determination of nationwide scope or effect, Congress "entrusted EPA with discretion to determine the proper venue as the agency sees fit." *Id.* at 746; accord *Texas* v. *EPA*, 983 F.3d 826, 834-835 (5th Cir. 2020). If EPA concludes that a regional circuit is best equipped to evaluate a particular agency action—*e.g.*, because challenges are likely to focus on local or regional issues—EPA may decline to publish the relevant finding, thereby ensuring that the regional circuit will have venue over any challenge to the action.

b. The disapproval action here was "based on" at least four "determination[s] of nationwide scope or effect." 42 U.S.C. 7607(b)(1). The determinations are nationwide in scope because they uniformly resolved issues regarding the appropriate application of the Good Neighbor Provision to plans submitted by States in multiple judicial circuits. The determinations are nationwide in effect because they produced legal consequences for States nationwide, affecting their obligations as upwind emission sources and downwind emission receptors. And the final action was "based on" the determinations because those determinations formed the core of EPA's disapproval of the state plans.

First, EPA determined that it was appropriate to rely on updated, 2016-based modeling as the "primary" basis for its "assessment of air quality conditions and pollution contribution." 88 Fed. Reg. at 9380. EPA used that modeling of conditions across the country in considering all of the 21 state plan submissions. And

that modeling affected the manner in which responsibility for achieving compliance with the ozone NAAQS was allocated between upwind and downwind States.

Second, EPA determined that it was appropriate to apply a 1% contribution threshold across all States to assess whether a State contributed more than a de minimis amount of ozone pollution downwind. 88 Fed. Reg. at 9371; see J.A. 251a-259a. Although EPA considered adopting different thresholds for different States, EPA concluded that a uniform threshold nationwide was "essential" for interstate ozone transport, which requires "a unique degree of concern for consistency, parity, and equity across state lines" in order to equitably allocate responsibility for ozone pollution among all States. 88 Fed. Reg. at 9373-9374.

Third, EPA determined that the relative contributions of other States or countries could not excuse a State from analyzing whether its own emissions "significantly" contribute to downwind nonattainment. 88 Fed. Reg. at 9378. EPA explained that the Good Neighbor provision requires all States to address their significant contributions, and that "[w]hether emissions from other states or other countries also contribute" to the downwind air quality issue "is typically not relevant in assessing" whether a State is significantly contributing to the problem and therefore must curb its emissions. *Ibid.*

Fourth and finally, EPA determined that, once a State is identified as "linked," the State cannot rely on emission-reduction measures that are not actually incorporated into its state plan. 88 Fed. Reg. at 9376-9377. EPA explained that many States had claimed emission-reduction measures that were already accounted for in EPA's modeling. EPA therefore declined

to "double-count[]" those measures by considering them, at step three of its analysis, as measures that would eliminate significant contribution. *Id.* at 9377. EPA also explained that States could not simply point to anticipated upcoming reductions where such measures have not been "rendered enforceable" by inclusion within the state plan itself, because such measures could then be "modified or amended in ways that would undermine the basis for the state's reliance on them." *Id.* at 9376.

Each of those determinations had nationwide scope, as each governed EPA's assessment of state plan submissions across the country. The determinations also had nationwide effect because an EPA decision concerning one State's Good Neighbor plan can affect the legal obligations of other States, particularly those downwind. Those effects are a consequence of the interwoven linkages across the country that characterize interstate ozone transport, and of the CAA requirement that every State must come into compliance with the NAAQS by the statutory deadline. See *Wisconsin* v. *EPA*, 938 F.3d 303, 313 (D.C. Cir. 2019) (per curiam); 42 U.S.C. 7511(a)(1); J.A. 268a-272a. As a result of the linkages, EPA's assessment of upwind States' implementation plans and the control measures necessary for those States to comply with Good Neighbor obligations necessarily affects the amount of emissions for which the downwind States (and potentially other linked upwind States) will be responsible.

For example, 25.8% of the ozone in Galveston County, Texas comes from upwind States, with contributions above the 1% threshold from Alabama, Arkan-

sas, Louisiana, Mississippi, and Oklahoma.[6] All five linked States concluded for various reasons that they do not significantly contribute to ozone pollution in Texas. See 88 Fed. Reg. at 9354-9355, 9357-9359. If EPA had applied the higher threshold that various States advocated, so that particular upwind States were not required to reduce their own emissions, Texas would have been required to make up the difference necessary to attain the NAAQS in Galveston.

That example likewise illustrates that EPA's disapproval action was "based on" its nationwide determinations. Application of EPA's determinations regarding the updated modeling data and appropriate threshold drove EPA's conclusions regarding the linkages among all States. Application of EPA's determinations regarding relative contributions drove EPA's conclusions regarding whether a State had adequately analyzed its "significant contribution." And application of EPA's determination regarding relevant emissions-reduction measures drove EPA's conclusions as to whether state plans must incorporate additional measures to address significant contributions. Those determinations were essential to EPA's reasoning in disapproving the state plans.

The Sixth Circuit recently concluded that EPA's decision to rely on updated modeling and the 1% contribution threshold was arbitrary and capricious, and the court vacated EPA's disapproval of Kentucky's plan on that basis. *Kentucky* v. *EPA*, 123 F.4th 447, 473 (2024); see *id.* at 467-471. Although the Sixth Circuit rejected the government's argument that venue for the challenge lay in the D.C. Circuit, see *id.* at 457-467, the

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[6] See EPA, *Air Quality Modeling Technical Support Document: 2015 Ozone NAAQS* C-2-C-3, D-2, https://perma.cc/Z955-CHD7.

court's merits analysis logically implies that the challenged disapproval action is "based on" the nationwide determinations. If (as the Sixth Circuit held) judicial invalidation of the relevant determinations provided a sufficient basis for finding the final action itself to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 42 U.S.C. 7607(d)(9)(A); 5 U.S.C. 706(2)(A), then the determinations are properly viewed as a "necessary logical condition" of the action, *Safeco*, 551 U.S. at 63, and the requisite causal relationship exists.[7]

c. The statutory history confirms that Congress intended for final actions like the one at issue here to be reviewable in the D.C. Circuit.

Before Congress amended the venue provision to authorize D.C. Circuit review of locally or regionally applicable actions with nationwide scope or effect, the 1970 statute made the approval or promulgation of state or federal plans reviewable in "the appropriate circuit." 42 U.S.C. 1857h-5(b)(1) (1970). Disputes concerning that language spawned protracted litigation. See David P. Currie, *Judicial Review Under Federal Pollution Laws*, 62 Iowa L. Rev. 1221, 1262-1269 (1977). Parties faced a lack of clarity as to which circuit was "the appropriate circuit" when a petitioner challenged a final action pertaining to state implementation plans submit-

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[7] EPA argued in *Kentucky* that the possible invalidity of particular agency determinations would be "harmless" because the agency would have disapproved Kentucky's plan even without those determinations. See *Kentucky*, 123 F.4th at 471. The Sixth Circuit rejected that argument. See *id.* at 471-472. In any event, other nationwide EPA determinations described above (see pp. 34-36, *supra*), and the four specified nationwide determinations taken together, indisputably were a but-for cause of EPA's decision to disapprove the 21 state plans.

ted by multiple States spanning multiple judicial circuits. *Id.* at 1264.

In light of that uncertainty, one petitioner filed identical petitions in ten regional circuits, with an eleventh in the D.C. Circuit, and then asked each of the regional circuits to transfer the case to the D.C. Circuit for resolution. Currie 1263. Five courts of appeals agreed to do so, while the other five stayed proceedings pending the disposition of the D.C. Circuit case. *Ibid.* Each of the petitions challenged an EPA action that had approved or disapproved (in whole or in part) numerous state implementation plans, based on the agency's determinations that the plan submission and attainment deadlines for certain pollutants should be extended, giving States more time to adopt the necessary control measures. See *Natural Resources Defense Council* v. *EPA*, 475 F.2d 968, 969-970 (D.C. Cir. 1973) (per curiam); 37 Fed. Reg. 10,842 (May 31, 1972).

In an opinion approving a transfer and finding the D.C. Circuit to be "the appropriate circuit," the First Circuit explained that "[t]he legal issues raised by petitioners in the" various pending cases "seem[ed] to be identical," and that "litigation in several circuits, with possible inconsistent and delayed results on the merits, can only serve to frustrate the strong Congressional interest in improving the environment." *Natural Resources Defense Council* v. *EPA*, 465 F.2d 492, 495 (1972) (per curiam). The D.C. Circuit agreed, explaining that "[n]one of the[] issues" raised by the petitions "involve facts or laws peculiar to any one jurisdiction; rather, all concern uniform determinations of nationwide effect made by the Administrator." *Natural Resources Defense Council*, 475 F.2d at 970.

In 1976, the Administrative Conference of the United States (ACUS) drafted recommendations for amending and clarifying the CAA venue provision. 41 Fed. Reg. at 56,767. ACUS urged Congress to "clarify[] that the appropriate circuit is the one containing the state whose plan is challenged." *Ibid.* EPA General Counsel G. William Frick provided additional views, however, and counseled that "where 'national issues' are involved they should be reviewed in the D.C. Circuit." *Id.* at 56,768. Frick noted that, although EPA actions involving state implementation plans "usually involve issues peculiar to the affected States, such actions sometimes involve generic determinations of nationwide scope or effect." *Id.* at 56,768-56,769. In Frick's view, "Congress intended review in the D.C. Circuit of 'matters on which national uniformity is desirable'" because of "the D.C. Circuit's obvious expertise in administrative law matters" and its familiarity with the CAA's "complex" text and history. *Id.* at 56,769. Citing the *Natural Resources Defense Council* cases as illustrative, Frick explained that it "makes sense to centralize review of 'national' [state implementation plan] issues in the D.C. Circuit, taking advantage of its administrative law expertise and facilitating an orderly development of the basic law under the Act, rather than to have such issues decided separately by a number of courts." *Ibid.*

By authorizing D.C. Circuit review of final EPA actions that are based on "determination[s] of nationwide scope or effect," the 1977 amendments incorporated Frick's own language. 42 U.S.C. 7607(b)(1); see 41 Fed. Reg. at 56,768-56,769. The House Report that accompanied the 1977 amendments "concur[red]" with Frick's "comments, concerns, and recommendation." 1977 House Report 324. That history reflects Congress's awareness

that, even when a particular EPA action specifically addresses an individual State—including by assessing its implementation plan—judicial review of the action may implicate national concerns. After considering the competing viewpoints expressed by ACUS and Frick as to the proper means of resolving those national issues, Congress opted to authorize uniform resolution by providing a mechanism for exclusive D.C. Circuit review.

2. Petitioners' contrary reasoning would render the "nationwide scope or effect" prong of Section 7607(b)(1) practically insignificant

In arguing that EPA did not make any determinations of nationwide scope or effect, petitioners attempt to limit the relevant "determination" to the agency's ultimate decision. Petitioners further focus on the State-specific circumstances that EPA *also* considered in the course of assessing the various implementation plans. Petitioners' approach is inconsistent with the statutory text and would severely undercut the intended reach of Section 7607(b)(1)'s third prong. Under the correct interpretation of the statute, that prong has both meaningful reach and meaningful limits, each designed to further Congress's purpose of channeling to the D.C. Circuit those challenges that are likely to raise issues of national importance.

a. Petitioners contend that, for an EPA action to qualify for D.C. Circuit review under Section 7607(b)(1)'s third prong, the relevant nationwide "determination" must be the "'ultimate decision'" of the final action, such that the court should ask whether the "'final action' has a 'nationwide scope or effect.'" State Br. 41 (citations omitted); see Industry Br. 47-49. That argument would eliminate the statute's distinction between the final "ac-

tion" and the relevant "determination," and it would ultimately render Section 7607(b)(1)'s third prong meaningless.

In applying the first two prongs of Section 7607(b)(1), the Court must consider whether EPA's disapproval action itself is nationally applicable or instead is locally or regionally applicable. Application of the third prong, by contrast, does not turn on the nature of EPA's ultimate action disapproving the various state plans. Rather, the third prong potentially applies *only* if the Court finds the disapproval action itself to be "locally or regionally applicable," and that prong's applicability depends on EPA's stated *reasons* for disapproving the state plans. The methodological determinations identified above governed EPA's analysis of state implementation plans across the country and ultimately affected the legal obligations of upwind and downwind States nationally. See pp. 34-37, *supra*. And because EPA applied those determinations to each of the 21 state plan submissions, EPA's finding that the disapproval was based on determinations of nationwide scope or effect remains valid, whether the relevant agency action is viewed as the single combined disapproval action or instead as 21 State-specific disapprovals. Contra Industry Br. 49-51.

The history of Section 7607(b)(1)'s third prong further supports an interpretation that distinguishes between EPA's final "action" and the agency's underlying "determination[s]." 42 U.S.C. 7607(b)(1). In amending the venue provision to incorporate that prong, Congress adopted the recommendation of EPA's then-General Counsel Frick. Frick cited the *Natural Resources Defense Council* litigation, in which EPA had acted on various state plans while granting "two-year extensions of the date for attainment of national ambient air quality

standards in a number of metropolitan areas." 41 Fed. Reg. at 56,769. There, the relevant determinations of nationwide scope or effect were EPA's decisions to extend compliance deadlines, not the agency's ultimate approval or disapproval of the various state plans. See pp. 38-40, *supra*.

Petitioners' conflation of the relevant "determination" and the final action would also drain Section 7607(b)(1)'s third prong of any practical significance. As explained, that prong potentially applies *only* to EPA actions that are locally or regionally applicable, rather than nationally applicable. But if the relevant determination were essentially equivalent to the final action, it is difficult to imagine an action that would not be nationally applicable under Section 7607(b)(1)'s first prong, but that would qualify as nationwide in scope or effect. Petitioners argue (State Br. 39, 41; Industry Br. 46-47) that Section 7607(b)(1)'s third prong should be read narrowly because it establishes an exception to a general rule of regional-circuit review of locally or regionally applicable actions. But "this Court has made clear that statutory exceptions are to be read fairly, not narrowly, for they 'are no less part of Congress's work than its rules and standards—and all are worthy of a court's respect.'" *HollyFrontier Cheyenne Ref., LLC* v. *Renewable Fuels Ass'n*, 594 U.S. 382, 395-396 (2021) (citation omitted).

Fairly read, the plain text of the third prong does not limit the relevant determination to the "ultimate disposition" or otherwise equate it to the final action under review. Rather, the statute distinguishes between the challenged EPA action itself and the agency's stated reasons for taking that action. The third prong reflects Congress's recognition that centralized review of EPA's

nationwide legal or policy judgments may be appropriate even when such judgments are challenged in a petition for review of a local agency action. To the extent the Court views the disapproval action as locally or regionally applicable, that principle is directly implicated here.

b. Petitioners assert (State Br. 47-51; Industry Br. 51-54) that the disapproval action falls outside Section 7607(b)(1)'s third prong because the States' plan submissions and EPA's analysis had State-specific aspects. But the State-specific analyses petitioners highlight largely reflect the application of the nationwide determinations to each State's circumstances. For example, petitioners note (State Br. 48; Industry Br. 51) Utah's argument during the administrative proceedings that it need not reduce its contributions to Colorado-based receptors because its contribution was minimal in comparison to those of other emissions sources. But EPA rejected that argument—made by numerous other States—based on EPA's nationwide determination that the relative magnitude of contributions from other sources does not relieve States of their Good Neighbor obligations. 88 Fed. Reg. at 9378-9379. Similarly, petitioners emphasize (State Br. 47; Industry Br. 52) Oklahoma's argument that existing emission-reduction measures were sufficient to meet its Good Neighbor obligations. But again, many other States made the same argument, and EPA concluded that no linked State could meet its Good Neighbor obligations simply by relying on existing control measures or anticipated reductions that are not incorporated into enforceable state plans. See 88 Fed. Reg. at 9343, 9377.

In treating EPA's need to consider State-specific circumstances as controlling the venue inquiry, petitioners

would effectively limit D.C. Circuit venue under Section 7607(b)(1)'s third prong to review of EPA actions that are based *solely* on determinations of nationwide scope or effect. Nothing in the statutory text supports that approach. Where Congress intended to require such a limitation, it said so explicitly. See, *e.g.*, 42 U.S.C. 7607(b)(1) (providing an exception to the statute's 60-day filing window where the "petition is based *solely* on grounds arising after" that time period expires) (emphasis added); cf. *Bostock*, 590 U.S. at 656 ("As it has in other statutes, [Congress] could have added 'solely' to indicate that actions taken 'because of' the confluence of multiple factors do not violate the law.") (citation omitted).

Once again, petitioners' approach would render the "nationwide scope or effect" prong practically insignificant and is inconsistent with the statutory history. 42 U.S.C. 7607(b)(1). By its terms, Section 7607(b)(1)'s third prong applies only to actions that are "locally or regionally applicable." *Ibid.* Nearly all such actions can be expected to rest at least in part on consideration of local or regional circumstances. Yet on petitioners' view, EPA's consideration of such circumstances is sufficient to preclude D.C. Circuit review. And as explained above (see pp. 38-41, *supra*), Congress enacted Section 7607(b)(1) in its current form after then-General Counsel Frick specifically highlighted the fact that EPA's approval of plans for individual States—which necessarily rest at least in part on State-specific circumstances—can also raise issues of national significance for which D.C. Circuit review is appropriate. See 41 Fed. Reg. at 56,769. Petitioners' interpretation thus contravenes Congress's purpose of centralizing review of national issues in the D.C. Circuit and prioritizing ef-

ficient resolution of those issues, even when the actions also address local or regional concerns.

c. Petitioners contend (State Br. 54; Industry Br. 55) that adopting EPA's interpretation would allow D.C. Circuit venue for challenges to every locally or regionally applicable EPA action. That is incorrect. The statutory text includes significant limitations that prevent that result.

i. As an initial matter, the relevant language in Section 7607(b)(1) imposes a causation requirement, authorizing D.C. Circuit venue only when the challenged agency action is "*based on* a determination of nationwide scope or effect." 42 U.S.C. 7607(b)(1) (emphasis added). See pp. 31-32, *supra*. EPA's finding that such a standard is satisfied is subject to arbitrary-and-capricious review. See p. 33, *supra*. That causation requirement ensures that D.C. Circuit review will be available only if the relevant determinations are at the core of EPA's action. For the reasons already explained, *ibid*., that causation requirement is satisfied here—but it will not be satisfied for *every* EPA action.

ii. The word "determination" suggests a resolution of an unsettled issue. See *Webster's* 616 ("the settling and ending of a controversy esp. by judicial decision"). On that understanding, EPA does not make a "*determination* of nationwide scope" when it merely applies a previously established agency rule, policy, or interpretation to new "locally or regionally applicable" circumstances. In deciding whether an EPA rule or policy constitutes a "determination" when the agency applies it in taking a new action, the court may consider whether EPA announced the rule or policy at roughly the same time as the challenged agency action itself. The court may also consider whether the participants in any

notice-and-comment period or comparable agency proceeding leading up to the challenged action contested the validity of the rule or policy.

That approach reflects a textually reasonable understanding of the statutory term "determination," and it would further the congressional policy judgments reflected in the second and third prongs of Section 7607(b)(1). The vast majority of "locally or regionally applicable" EPA actions reflect the application of some nationwide agency rule, policy, or interpretation to a factual setting that is confined to a single judicial circuit. When the circumstances suggest that the nationwide rule, policy, or interpretation itself is likely to be called into question in any judicial challenge to the EPA action, routing such challenges to the D.C. Circuit serves important interests in judicial efficiency and nationwide uniformity. That is particularly so if the relevant EPA determination is intended to govern future agency actions across the country. But where the validity of the general rule or policy appears to be settled, such that any judicial challenges to the action are likely to focus on the application of the general pronouncement to discrete local facts, those interests are inapposite.

Here, EPA made each of the relevant determinations in the disapproval action itself, after considering comments disputing their validity. See 88 Fed. Reg. at 9365-9367, 9370-9375, 9376-9378. While the determinations may be consistent with EPA's prior implementation of other NAAQS, EPA did not simply apply existing rules or standards; rather, its determinations resolved controversies over specific methodological issues that were vigorously contested. EPA's conclusions supporting the disapproval action therefore are properly

viewed as "determination[s]" within the meaning of Section 7607(b)(1).

iii. As explained above, a locally or regionally applicable EPA action is reviewable in the D.C. Circuit only if (a) the action "is based on a determination of nationwide scope or effect" *and* (b) EPA "finds and publishes that such action is based on such a determination." 42 U.S.C. 7607(b)(1). Even when the facts and law would support the specified finding, EPA has plenary discretion to decide whether to publish that finding, and the agency "may weigh any number of considerations" in making that decision. *Sierra Club*, 47 F.4th at 746; see pp. 33-34, *supra*. For example, EPA may consider whether any petitions for review of a particular action would likely contest EPA determinations of national concern, or instead would likely dispute EPA's understanding of local or regional circumstances. For EPA actions in the latter category, the agency may decline to publish the relevant finding, thereby ensuring that the regional circuit will have venue over any challenge to the action.

d. The limitations described above meaningfully constrain the number of locally or regionally applicable actions that are subject to D.C. Circuit review, while allowing efficient and uniform resolution of disputed issues of national significance. By contrast, petitioners' interpretation would limit D.C. Circuit review of locally or regionally applicable EPA actions to a vanishingly small category. Embracing petitioners' interpretation would lead to the very problems Congress sought to avoid in amending the CAA's venue provision to include the nationwide-scope-or-effect language.

This case is illustrative. Because multiple circuits have declined to transfer challenges to the D.C. Circuit,

EPA has been litigating substantially similar challenges to the disapproval action in eight courts of appeals. Rather than focusing their challenges on State-specific findings that contributed to EPA's disapproval of particular state plans, the petitioners in all of those cases have primarily contested the legality of the same core determinations that EPA adopted and applied nationwide.

Consideration of the same basic legal challenges by multiple circuits wastes judicial resources and creates a substantial risk of inconsistent merits rulings. Such rulings would produce a fragmented Good Neighbor program for ozone, subjecting similarly situated States to different regulatory burdens based on the circuits in which those States are located, and complicating EPA's consideration of the "overlapping and interwoven linkages between upwind and downwind States" that characterize the ozone problem. *EPA* v. *EME Homer City Generation, L. P.*, 572 U.S. 489, 496-497 (2014). Such a result is contrary to the principles animating the Good Neighbor Provision, and to Section 7607(b)(1)'s purpose of ensuring efficient, uniform resolution of issues with national significance. If this Court endorses petitioners' venue analysis, future EPA actions similar to the disapproval action here can be expected to spawn litigation in numerous courts of appeals, with a consequent waste of judicial resources and a heightened risk of inconsistent outcomes. Nothing in the statutory text requires that result, and the Court should reject it.

CONCLUSION

The order of the court of appeals should be affirmed.

Respectfully submitted.

DIMPLE CHAUDHARY
Acting General Counsel
SUSANNAH WEAVER
Deputy General Counsel
GAUTAM SRINIVASAN
Associate General Counsel
MATTHEW MARKS
Deputy Associate General Counsel
JEANHEE HONG
ROSEMARY H. KABAN
DANIEL P. SCHRAMM
EMILY SEIDMAN
Attorneys
Environmental Protection Agency

ELIZABETH B. PRELOGAR
Solicitor General
KATE KONSCHNIK
Acting Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
AIMEE W. BROWN
Assistant to the Solicitor General
ALEX J. HARDEE
ALEXANDRA L. ST. ROMAIN
Attorneys

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APPENDIX

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APPENDIX

1. 42 U.S.C. 7408 provides:

Air quality criteria and control techniques

(a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970 but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

(b) Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership

(1) Simultaneously with the issuance of criteria under subsection (a), the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the Administra-

tor may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1), which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

(c) Review, modification, and reissuance of criteria or information

The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section. Not later than six months after August 7, 1977, the Administrator shall revise and reissue criteria relating to concentrations of NO2 over such period (not more than three hours) as he deems appropriate. Such criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

(d) Publication in Federal Register; availability of copies for general public

The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.

(e) Transportation planning and guidelines

The Administrator shall, after consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, and with State and local officials, within nine months after November 15,

1990,[1] and periodically thereafter as necessary to maintain a continuous transportation-air quality planning process, update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. Such guidelines shall include information on—

(1) methods to identify and evaluate alternative planning and control activities;

(2) methods of reviewing plans on a regular basis as conditions change or new information is presented;

(3) identification of funds and other resources necessary to implement the plan, including interagency agreements on providing such funds and resources;

(4) methods to assure participation by the public in all phases of the planning process; and

(5) such other methods as the Administrator determines necessary to carry out a continuous planning process.

(f) Information regarding processes, procedures, and methods to reduce or control pollutants in transportation; reduction of mobile source related pollutants; reduction of impact on public health

(1) The Administrator shall publish and make available to appropriate Federal, State, and local environmental and transportation agencies not later than one

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[1] See Codification note below.

year after November 15, 1990, and from time to time thereafter—

(A) information prepared, as appropriate, in consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, regarding the formulation and emission reduction potential of transportation control measures related to criteria pollutants and their precursors, including, but not limited to—

(i) programs for improved public transit;

(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;

(iii) employer-based transportation management plans, including incentives;

(iv) trip-reduction ordinances;

(v) traffic flow improvement programs that achieve emission reductions;

(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

(x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) programs to control extended idling of vehicles;

(xii) programs to reduce motor vehicle emissions, consistent with subchapter II, which are caused by extreme cold start conditions;

(xiii) employer-sponsored programs to permit flexible work schedules;

(xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) programs for new construction and major reconstructions of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

(xvi) program to encourage the voluntary removal from use and the marketplace of pre-1980

model year light duty vehicles and pre-1980 model light duty trucks.[2]

(B) information on additional methods or strategies that will contribute to the reduction of mobile source related pollutants during periods in which any primary ambient air quality standard will be exceeded and during episodes for which an air pollution alert, warning, or emergency has been declared;

(C) information on other measures which may be employed to reduce the impact on public health or protect the health of sensitive or susceptible individuals or groups; and

(D) information on the extent to which any process, procedure, or method to reduce or control such air pollutant may cause an increase in the emissions or formation of any other pollutant.

(2) In publishing such information the Administrator shall also include an assessment of—

(A) the relative effectiveness of such processes, procedures, and methods;

(B) the potential effect of such processes, procedures, and methods on transportation systems and the provision of transportation services; and

(C) the environmental, energy, and economic impact of such processes, procedures, and methods.

(g) Assessment of risks to ecosystems

The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identi-

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[2] So in original. The period probably should be a semicolon.

fied by the Administrator in the Administrator's sole discretion).

(h) RACT/BACT/LAER clearinghouse

The Administrator shall make information regarding emission control technology available to the States and to the general public through a central database. Such information shall include all control technology information received pursuant to State plan provisions requiring permits for sources, including operating permits for existing sources.

2. 42 U.S.C. 7409 provides:

National primary and secondary ambient air quality standards

(a) Promulgation

(1) The Administrator—

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) National primary ambient air quality standard for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO_2 concentrations over a period of not more than 3 hours unless, based on the crite-

ria issued under section 7408(c) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2)(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 7408 of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and

standards as may be appropriate under section 7408 of this title and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

3. 42 U.S.C. 7410 provides:

State implementation plans for national primary and secondary ambient air quality standards

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt

and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subpara-

graph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

(D) contain adequate provisions—

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local)

law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator—

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in section 7603 of this title and adequate contingency plans to implement such authority;

(H) provide for revision of such plan—

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);

(J) meet the applicable requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for—

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover—

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(3)(A) Repealed. Pub. L. 101-549, title I, § 101(d)(1), Nov. 15, 1990, 104 Stat. 2409.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is

submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c), shall be required to revise an applicable implementation plan because one or more exemptions under section 7418 of this title (relating to Federal facilities), enforcement orders under section 7413(d)[1] of this title, suspensions under subsection (f) or (g) (relating to temporary energy or economic authority), orders under section 7419 of this title (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 7413(e)[1] of this title (relating to iron- and steel-producing operations) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, or extensions had been granted.

(4) Repealed. Pub. L. 101-549, title I, § 101(d)(2), Nov. 15, 1990, 104 Stat. 2409.

(5)(A)(i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable imple-

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[1] See References in Text note below.

mentation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under this subsection to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under subsection (c) respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term "indirect source" means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of subsection (c)(2)(D)(ii)), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term "indirect source review program" means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations—

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term "transportation control measure" does not include any measure which is an "indirect source review program".

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 7413(d)[2] of this title or section 7419 of this title (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

(b) Extension of period for submission of plans

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[2] See References in Text note below.

The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under subsection (k)(1)(A), or

(B) disapproves a State implementation plan submission in whole or in part,

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

(2)(A) Repealed. Pub. L. 101-549, title I, § 101(d)(3)(A), Nov. 15, 1990, 104 Stat. 2409.

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously re-

quired by the Administrator shall be void upon June 22, 1974. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) Repealed. Pub. L. 101-549, title I, § 101(d)(3)(B), Nov. 15, 1990, 104 Stat. 2409.

(D) For purposes of this paragraph—

(i) The term "parking surcharge regulation" means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term "management of parking supply" shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term "preferential bus/carpool lane" shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after June 22, 1974, by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one

public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(3) Upon application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that such unit has adequate authority under State or local law, the Administrator may delegate to such unit the authority to implement and enforce within the jurisdiction of such unit any part of a plan promulgated under this subsection. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing any applicable provision of a plan promulgated under this subsection.

(4) Repealed. Pub. L. 101-549, title I, § 101(d)(3)(C), Nov. 15, 1990, 104 Stat. 2409.

(5)(A) Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan by the Administrator upon application by the Governor of the State, which application shall include a certification by the Governor that he will revise such plan in accordance with subparagraph (B).

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after August 7, 1977, be revised to include comprehensive measures to:

(i) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(ii) implement transportation control measures necessary to attain and maintain national ambient air quality standards,

and such revised plan shall, for the purpose of implementing such comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing such grants and funds. Such measures shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emissions reductions equivalent to the reductions which may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(C) Any revision of an implementation plan for purposes of meeting the requirements of subparagraph (B) shall be submitted in coordination with any plan revision required under part D.

(d), (e) Repealed. Pub. L. 101-549, title I, § 101(d)(4), (5), Nov. 15, 1990, 104 Stat. 2409

(f) National or regional energy emergencies; determination by President

(1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that—

(A) a temporary suspension of any part of the applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) may be necessary, and

(B) other means of responding to the energy emergency may be inadequate.

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in paragraph (2) and may take effect immediately.

(2) A temporary emergency suspension under this subsection shall be issued to a source only if the Governor of such State finds that—

(A) there exists in the vicinity of such source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(B) such unemployment or loss can be totally or partially alleviated by such emergency suspension.

Not more than one such suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(3) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator, if any. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of paragraph (2).

(4) This subsection shall not apply in the case of a plan provision or requirement promulgated by the Administrator under subsection (c) of this section, but in any such case the President may grant a temporary emergency suspension for a four month period of any such provision or requirement if he makes the determinations and findings specified in paragraphs (1) and (2).

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c-10[2] of this title, as in effect before August 7, 1977, or section 7413(d)[2] of this title, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(g) Governor's authority to issue temporary emergency suspensions

(1) In the case of any State which has adopted and submitted to the Administrator a proposed plan revision which the State determines—

(A) meets the requirements of this section, and

(B) is necessary (i) to prevent the closing for one year or more of any source of air pollution, and (ii) to

prevent substantial increases in unemployment which would result from such closing, and

which the Administrator has not approved or disapproved under this section within 12 months of submission of the proposed plan revision, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

(2) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of this subsection.

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c-10[3] of this title as in effect before August 7, 1977, or under section 7413(d)[3] of this title upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

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[3] See References in Text note below.

(h) Publication of comprehensive document for each State setting forth requirements of applicable implementation plan

(1) Not later than 5 years after November 15, 1990, and every 3 years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(i) Modification of requirements prohibited

Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d)[3] of this title (relating to compliance orders), a plan promulgation under subsection (c), or a plan revision under subsection (a)(3); no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards

As a condition for issuance of any permit required under this subchapter, the owner or operator of each new or modified stationary source which is required to obtain

such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used at such source will enable it to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this chapter.

(k) Environmental Protection Agency action on plan submissions

(1) Completeness of plan submissions

(A) Completeness criteria

Within 9 months after November 15, 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this chapter.

(B) Completeness finding

Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to

have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

(C) Effect of finding of incompleteness

Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) Deadline for action

Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) Full and partial approval and disapproval

In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the require-

ments of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.

(4) Conditional approval

The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

(5) Calls for plan revisions

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 7506a of this title or section 7511c of this title, or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable

under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D, unless such date has elapsed).

(6) Corrections

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

(*l*) Plan revisions

Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.

(m) Sanctions

The Administrator may apply any of the sanctions listed in section 7509(b) of this title at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of section 7509(a) of this title in relation to any plan or plan item (as that term is defined by the Administrator) required under this chapter, with re-

spect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this chapter relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous sentence with respect to any deficiency referred to in section 7509(a) of this title to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in section 7509(a) of this title, such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

(n) Savings clauses

(1) Existing plan provisions

Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before November 15, 1990, shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this chapter.

(2) Attainment dates

For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State—

(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on November 15, 1990, or

(B) in response to a finding of substantial inadequacy under subsection (a)(2) (as in effect immediately before November 15, 1990),

shall provide for attainment of the national primary ambient air quality standards within 3 years of November 15, 1990, or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

(3) Retention of construction moratorium in certain areas

In the case of an area to which, immediately before November 15, 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) (as in effect immediately before November 15, 1990) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of section 7502(b)(6) of this title (relating to establishment of a permit program) (as in effect immediately before November 15, 1990) or 7502(a)(1) of this title (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before November 15, 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section 7502(c)(5) of this title (relating to permit programs) or subpart 5 of part D (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.

(*o*) Indian tribes

If an Indian tribe submits an implementation plan to the Administrator pursuant to section 7601(d) of this title, the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to section 7601(d)(2) of this title. When such plan becomes effective in accordance with the regulations promulgated under section 7601(d) of this title, the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(p) Reports

Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles traveled, congestion levels, and any other information the Administrator may deem necessary to assess the development[4] effectiveness, need for revision, or implementation of any plan or plan revision required under this chapter.

4. 42 U.S.C. 7607(b)(1) provides:

Administrative proceedings and judicial review

(b) Judicial review

(1) A petition for review of action of the Administrator in promulgating any national primary or secondary

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[4] So in original. Probably should be followed by a comma.

ambient air quality standard, any emission standard or requirement under section 7412 of this title, any standard of performance or requirement under section 7411 of this title,,[3] any standard under section 7521 of this title (other than a standard required to be prescribed under section 7521(b)(1) of this title), any determination under section 7521(b)(5)[1] of this title, any control or prohibition under section 7545 of this title, any standard under section 7571 of this title, any rule issued under section 7413, 7419, or under section 7420 of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 7410 of this title or section 7411(d) of this title, any order under section 7411(j) of this title, under section 7412 of this title, under section 7419 of this title, or under section 7420 of this title, or his action under section 1857c-10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977) or under regulations thereunder, or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence

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[1] See References in Text note below.

[3] So in original.

may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.