

In the Supreme Court of the United States

COMMONWEALTH OF KENTUCKY, ET AL.,
Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

CHAMBER OF COMMERCE, ET AL.,
Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the D.C. Circuit**

**BRIEF OF AMICI CURIAE
COMPETITIVE ENTERPRISE INSTITUTE;
COMMITTEE FOR A CONSTRUCTIVE TOMORROW;
ENERGY & ENVIRONMENT LEGAL INSTITUTE;
HEARTLAND INSTITUTE; AND HEARTLAND IMPACT
IN SUPPORT OF PETITIONERS**

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INTEREST OF THE AMICI CURIAE

COMPETITIVE ENTERPRISE INSTITUTE (CEI) is a nonprofit educational and research institute headquartered in Washington, D.C., dedicated to promoting free markets, personal liberty, and limited government.¹ Since its founding in 1984, CEI has sought to improve public understanding of the consequences of overregulation through policy analysis, commentary, and litigation. CEI also pursues public-interest litigation to ensure that federal agencies act within the Constitution, the Administrative Procedure Act, and their enabling statutes. This case implicates CEI's longstanding interest in scientifically sound environmental regulation, permitting reform, federalism, and limits on administrative power.

COMMITTEE FOR A CONSTRUCTIVE TOMORROW (CFACT) is a Washington, DC-based nonprofit public policy and educational organization that promotes environmental protection, economic development, human health, and more productive lives for people throughout the United States and world, through modern science and technology grounded in complete and careful analysis of often competing needs, costs, benefits, interests and political agendas. Consistent with that mission, CFACT's interest in this case stems from the Environmental Protection Agency's unre-

¹ Pursuant to Rule 37.6, Amici Curiae states that no counsel for any party authored this brief in whole or in part, and no person or entity other than Amici, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for all parties received timely notice of Amici's intent to file this brief under Rule 37.2.

cedented off-cycle tightening of the PM2.5 standard from 12 to 9 micrograms per cubic meter without the “thorough review” required under Section 109 of the Clean Air Act, 42 U.S.C. §§ 7401 et seq. The effects of this Rule will have especially far-reaching and costly impacts on employment, the economy, and the health and well-being of American citizens.

ENERGY & ENVIRONMENT LEGAL INSTITUTE (“E&E Legal”) is a 501(c)(3) organization that champions responsible and balanced environmentalism which seeks to conserve the nation’s natural resources while ensuring a stable and strong economy through energy dominance. Specifically, E&E Legal advocates on behalf of responsible resource development, conservation, sound science, and a respect for property rights.

HEARTLAND INSTITUTE is one of the world’s leading free-market think tanks. It is a national non-profit research and education organization based in Arlington Heights, Illinois. Its mission since its founding in 1984 is to discover, develop, and promote free-market solutions to social and economic problems. The Heartland Institute plays an essential role in the national (and increasingly in the international) movement for personal liberty and limited government.

HEARTLAND IMPACT is a nonprofit 501(c)(4) organization based in Arlington Heights, Illinois that is affiliated with The Heartland Institute. Heartland Impact advocates for robust economic growth, broad-based prosperity, and opportunity for all Americans. The Heartland Institute and Heartland Impact’s interest in this case lies in preventing arbitrary regulatory government overreach to enforce environmental mandates that adversely impact the economy and American people.



SUMMARY OF THE ARGUMENT

The Environmental Protection Agency (EPA) claims authority to impose a new national ambient air quality standard (NAAQS) through an off-cycle reconsideration without completing the “thorough review” that 42 U.S.C. § 7409(d)(1) prescribes. This case does not question EPA’s ordinary authority to revise NAAQS after following the statutory process. It concerns a materially different claimed power: authority to set a nationally binding standard whenever EPA chooses without completing the thorough review Congress required.

That claimed authority is both unprecedented and consequential. EPA acknowledged that the 2024 Rule marked the first revision of a NAAQS without a completed statutory thorough review. The revision lowered the annual PM_{2.5} standard by 25 percent and immediately affected permitting, investment, and implementation obligations throughout the Nation.

The D.C. Circuit located that authority in Section 109(b)(1)’s statement that standards “may be revised in the same manner as promulgated.” 42 U.S.C. § 7409. Read in statutory context, however, that clause does not authorize EPA to avoid Section 109(d)(1)’s thorough-review requirement. *Id.* Sections 108 and 109 tie standards to current scientific criteria, an integrated review, and advice from the independent scientific committee Congress created for that purpose. 42 U.S.C. §§ 7408–7409.

The major questions doctrine therefore reinforces petitioners’ reading. When the Executive claims an

extraordinary power of vast economic and political significance under a long-extant statute, it must identify clear congressional authorization. *West Virginia v. EPA*, 597 U.S. 697, 721–24 (2022); *Learning Resources, Inc. v. Trump*, 607 U.S. 229, 242–48 (2026) (opinion of Roberts, C.J.). Section 109 contains no clear authorization for an off-cycle revision untethered from a completed thorough review. 42 U.S.C. § 7409

Section 109(d)(1), read in context with Sections 108 and 109(b), requires a thorough review before EPA revises a NAAQS, whether EPA acts during the regular five-year cycle or earlier. 42 U.S.C. §§ 7408–7409. The second sentence of Section 109(d)(1) permits EPA to “review and revise” standards “earlier or more frequently;” the review it authorizes is the thorough review that the same paragraph requires, not a license to discard the scientific-review requirements that govern revision. 42 U.S.C. § 7409. The D.C. Circuit’s contrary reading makes the thorough-review requirement optional and permits precisely the type of end run that Congress’s integrated scientific process was designed to prevent.

Certiorari is warranted to decide whether EPA may set NAAQS outside the statutory review cycle without a thorough review, in the absence of clear authorization from Congress.

Amici agrees with Petitioners’ arguments in full. Amici submits this brief separately to explain why the major questions doctrine reinforces that conclusion and why Congress’s integrated scientific-review process cannot be treated as optional.



BACKGROUND

The Environmental Protection Agency (EPA) makes some of the most consequential decisions in the federal government. It is not uncommon for EPA to account for most of the annual regulatory costs imposed across the entire federal government. *See, e.g., Office of Mgmt. & Budget, 2017 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act* (2019). Among EPA’s most consequential decisions is the establishment of National Ambient Air Quality Standards (NAAQS) for criteria pollutants such as fine particulate matter (PM_{2.5}). 42 U.S.C. §§ 7408–7410. Because those standards drive state planning, area designations, and permitting requirements throughout Title I of the Clean Air Act, 42 U.S.C. §§ 7401–7515, a revision has consequences across the national economy. On March 6, 2024, EPA finalized a Rule lowering the annual PM_{2.5} standard from 12 to 9 micrograms per cubic meter.

I. Brief Timeline for the 2024 PM_{2.5} Final Rule

On December 18, 2020, EPA completed its periodic review and retained the annual PM_{2.5} standard of 12 micrograms per cubic meter. *Review of the National Ambient Air Quality Standards for Particulate Matter*, 85 Fed. Reg. 82,684 (Dec. 18, 2020). As required by the five-year review process, EPA conducted a thorough review of the air-quality criteria and standards. EPA explained that the integrated assessment, CASAC review, and public review made the resulting studies “the most reliable source of scientific information” for

decisions that “all parties recognize as of great import.” *Id.* at 82,687.

One month later, Executive Order 13,990 directed agencies to review specified actions from the prior administration, including the 2020 PM2.5 decision. *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, Exec. Order No. 13,990, 86 Fed. Reg. 7037 (Jan. 20, 2021); White House, *Fact Sheet: List of Agency Actions for Review* (Jan. 20, 2021).

In an unprecedented move, on March 31, 2021, EPA dismissed the Clean Air Scientific Advisory Committee (CASAC), the statutorily required panel that advises the Administrator concerning NAAQS, as well as the Science Advisory Board. *Administrator Regan Directs EPA to Reset Critical Science-Focused Federal Advisory Committees*, U.S. Env’t Prot. Agency (Mar. 31, 2021). EPA announced reconsideration of the 2020 PM2.5 decision on June 10, 2021, and announced a newly constituted CASAC one week later, retaining only two prior members. *EPA to Reexamine Health Standards for Harmful Soot that Previous Administration Left Unchanged*, U.S. Env’t Prot. Agency (June 10, 2021); *EPA Announces Selections of Charter Members to the Clean Air Scientific Advisory Committee*, U.S. Env’t Prot. Agency (June 17, 2021).

In January 2023, EPA proposed lowering the annual PM2.5 standard to between 9 and 10 micrograms per cubic meter and sought comment on levels from 8 to 11. *Reconsideration of the National Ambient Air Quality Standards for Particulate Matter*, 88 Fed. Reg. 5558 (proposed Jan. 27, 2023). On March 6, 2024, EPA reduced the standard from 12 to 9 micrograms per cubic meter—a 25 percent reduction. *Reconsider-*

ation of the National Ambient Air Quality Standards for Particulate Matter, 89 Fed. Reg. 16,202 (Mar. 6, 2024); see *Reconsideration of the National Ambient Air Quality Standards for Particulate Matter; Correction*, 89 Fed. Reg. 103,652 (Dec. 19, 2024) (correction). Unlike the 2020 decision and every earlier NAAQS revision, the 2024 revision did not follow a completed Section 109(d)(1) thorough review. EPA later acknowledged that point in moving to vacate the Rule. EPA’s Motion for Vacatur at 2, *Commonwealth of Kentucky v. EPA*, No. 24-1050 (D.C. Cir. Nov. 24, 2025). 42 U.S.C. § 7409(d)(1).

EPA instead relied principally on the 2019 Integrated Science Assessment (ISA), supplemented by a targeted 2022 ISA Supplement. In EPA’s words, “the evidence presented within the 2019 ISA, along with the targeted identification and evaluation of new scientific information in the ISA Supplement, provides the scientific basis for the reconsideration of the 2020 PM NAAQS final decision.” 89 Fed. Reg. at 16,211. There was no new integrated assessment of the full body of scientific evidence. The 2024 Rule acknowledged the supplement’s limited scope:

Given the narrow scope of the ISA Supplement, it is important to recognize that the evaluation does not encompass the full multidisciplinary evaluation presented within the 2019 ISA that would result in weight-of-evidence conclusions on causality (*i.e.*, causality determinations). 89 Fed. Reg. at 16,218.

The 2019 ISA therefore remained the principal scientific assessment supporting the 2024 Rule even though it had been completed five years earlier. That departure matters because EPA had described studies

subjected to integrated EPA, CASAC, and public review as “the most reliable source of scientific information” for NAAQS decisions. 85 Fed. Reg. at 82,687.

In June 2026, the D.C. Circuit sustained the Rule. *Commonwealth of Kentucky v. EPA*, 179 F.4th 963 (D.C. Cir. 2026). The panel held that EPA need not complete a thorough review when it revises a NAAQS outside the five-year cycle, and it located EPA’s authority in Section 109(b)(1)’s statement that standards “may be revised in the same manner as promulgated.” *Commonwealth of Kentucky v. EPA*, 179 F.4th 963, 971 (D.C. Cir. 2026). It also relied heavily on the reconstituted CASAC’s recommendation in upholding the revised standard. *Id.*

II. The Nationwide Consequences of the 2024 PM2.5 Final Rule

Most EPA rules regulate particular sectors. The annual PM2.5 standard operates across the entire economy. A National Association of Manufacturers analysis estimates that the 9-microgram per cubic meter standard threatens at least 474 announced manufacturing projects representing nearly \$1 trillion in investment and more than 122,000 jobs. *Manufacturers Take Unlawful EPA Air Standard Fight to Supreme Court*, Nat’l Ass’n of Mfrs. (Aug. 28, 2026). Those estimates are relevant here not to challenge the wisdom of the standard, but to demonstrate the scale of the authority EPA claims to exercise without the statutory review Congress prescribed.

The consequences extend to state implementation and permitting. A revision requires nationwide area designations and state implementation measures, and it immediately tightens preconstruction permitting

requirements for affected sources. 42 U.S.C. §§ 7407 (d)(1), 7410(a), 7475(a)(3), 7503(a)(2). The U.S. Chamber of Commerce projects that 428 counties may be placed in nonattainment—more than three times EPA’s estimate of 119. *Hearing on EPA’s Revised PM_{2.5} Standards* Before the H. Comm. on Energy & Commerce, 119th Cong. (2025) (statement of Chad Whiteman, Vice President, Env’t & Regul. Aff., Global Energy Inst., U.S. Chamber of Commerce) (“Whiteman Statement”). EPA’s figure understates the Rule’s reach: EPA counted only counties with ambient monitors, omitting many adjacent unmonitored counties, and it relied on 2020–2022 data that exclude the severe 2023 wildfire season. *Id.* The Chamber’s modeling using 2021–2023 data found up to 50 percent more nonattainment areas, and upcoming designations will likely rely on that later data. *Id.* Counties in nonattainment face the most stringent permitting requirements, while many attainment counties may have little room for additional development.

EPA’s projections also assume emission reductions that may never materialize. EPA’s baseline credited the Good Neighbor Plan with cutting nearly 120,000 tons of nitrogen oxides, Whiteman Statement, *supra*, but this Court stayed enforcement of that plan. *Ohio v. EPA*, 603 U.S. 279 (2024). EPA also attributed roughly 500,000 tons of sulfur dioxide and nitrogen oxide reductions to Inflation Reduction Act tax incentives, Whiteman Statement, *supra*, many of which Congress has since repealed or curtailed. *See* Pub. L. No. 119-21 (2025). Without those reductions, attainment will be harder and the Rule’s reach broader than EPA estimated.

Because the standard applies nationwide, stricter permitting is expected in sectors ranging from agriculture and energy to mining, manufacturing, and transportation infrastructure. Whiteman Statement, *supra*; Oxford Economics, *Economic Impacts of a Stricter PM2.5 Standard* (Nat'l Ass'n of Mfrs. 2023). The resulting uncertainty and delay fall on projects that advance energy affordability and reliability, promote innovation in manufacturing and agriculture, and position the United States to lead in artificial intelligence. Whiteman Statement, *supra*.

Because EPA has not yet finalized nonattainment designations under the 2024 standard, direct data on the Rule's supply-chain effects have yet to emerge. A 2023 Oxford Economics study modeled an 8-microgram standard—one microgram below the standard EPA adopted—and projected substantial direct and upstream exposure for manufacturing output and employment. Oxford Economics, *supra*, at 3–6. Although the study does not measure the precise effects of the 9-microgram standard, it illustrates how permitting constraints can propagate through national supply chains.

The Rule also alters the federal-state relationship. The NAAQS program is designed as cooperative federalism: EPA sets standards, and States achieve them through implementation plans. U.S. Env't Prot. Agency, *Basic Information About Air Quality SIPs* (last updated Dec. 22, 2025). When a standard becomes so stringent that States cannot realistically attain it, that cooperation breaks down. States must develop implementation plans even though a substantial share of PM2.5 comes from diffuse sources, including wildfires and road dust, that states cannot readily control. The Chamber estimates that about 84 percent of PM2.5

emissions come from such non-point sources. U.S. Chamber of Commerce, *U.S. Chamber Urges Supreme Court Review of EPA’s Air Rule That’s Restricting Critical Infrastructure Investment* (Aug. 28, 2026). EPA has estimated that wildfires and prescribed burns alone account for 44 percent of the Nation’s primary PM2.5 emissions. U.S. Env’t Prot. Agency, *Fact Sheet: Wildland Fire, Air Quality and Public Health Considerations* (Feb. 3, 2023).

The Rule also affected permitting immediately. As the state petitioners explain, new construction, modifications, renewals, and applications pending when the Rule was finalized became subject to a more demanding and costly permitting analysis; an identified exceedance may also require nearby projects to revisit their permits. Petition for a Writ of Certiorari at 7–8, *Kentucky v. EPA*, No. 26-277 (filed Aug. 28, 2026).



ARGUMENT

- I. Because Congress Never Clearly Authorized EPA to Revise the NAAQS Off-Cycle Without a Thorough Review, EPA’s Unprecedented Assertion of Economically and Politically Significant Power Is Unlawful**
 - A. EPA Claims an Unprecedented Power to Revise National Standards Without the Review Congress Prescribed**

This case does not challenge EPA’s authority to revise NAAQS. Congress expressly authorized EPA to establish and revise those standards. The disputed

authority is narrower but extraordinary: EPA claimed that it may reopen and repeatedly lower a nationally binding NAAQS whenever it chooses, without completing the integrated “thorough review” specified in Section 109(d)(1). 42 U.S.C. § 7409(d)(1). EPA acknowledged that the 2024 Rule was the first NAAQS revision in the statute’s history made without a completed thorough review. EPA’s Motion for Vacatur at 2, *Commonwealth of Kentucky v. EPA*, No. 24-1050 (D.C. Cir. Nov. 24, 2025).

That distinction answers EPA’s strongest response. Standard setting lies within EPA’s general mission and expertise, but a general power to revise does not necessarily include an unprecedented power to dispense with the process that supplies the scientific foundation for revision. The major questions doctrine asks whether Congress clearly granted that particular authority.

The panel reached its conclusion through § 7409 (b)(1)’s statement that standards “may be revised in the same manner as promulgated,” even though EPA did not rely on that provision in the rulemaking and disavowed that rationale in litigation. *Commonwealth of Kentucky v. EPA*, 179 F.4th 963, 971–74 (D.C. Cir. 2026). That oblique clause does not clearly confer the unprecedented authority EPA claimed.

B. The Claimed Authority Is Economically and Politically Significant

The major questions doctrine applies when the Executive asserts an extraordinary power of vast economic and political significance under a long-extant statute. *West Virginia v. EPA*, 597 U.S. 697, 721–24 (2022); *Learning Resources, Inc. v. Trump*, 607 U.S.

229, 242–48 (2026) (opinion of Roberts, C.J.). Courts expect Congress to speak clearly when it assigns an agency decisions of “vast economic and political significance.” *West Virginia*, 597 U.S. at 716 (quoting *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014)). The inquiry depends not on regulatory cost alone, but on the asserted power’s breadth, novelty, history, statutory context, and practical consequences.

Those considerations converge here. EPA’s claimed authority would permit the agency to reopen a completed statutory review, revise a national standard through a narrower process, and repeat that maneuver without any limiting principle tied to the five-year cycle. EPA used that claimed authority to lower the annual standard by 25 percent, triggering nationwide permitting, designation, and implementation consequences. The magnitude of those consequences does not authorize EPA to consider cost when selecting the standard’s level. It demonstrates why Congress would be expected to speak clearly before allowing EPA to impose those consequences through an unprecedented departure from the review process Congress prescribed.

The significance is political as well as economic. In 2011, “President Obama personally intervened to halt an off-cycle revision of the ozone standard.” See Part II.D, *infra*; *Statement on the Ozone National Ambient Air Quality Standards*, Daily Comp. Pres. Doc. 201100609 (Sept. 2, 2011) (statement by President Barack Obama). A question the President has resolved personally is not the kind of “ancillary” matter an agency settles under implied authority. See *Whitman v. American Trucking Ass’ns, Inc.*, 531 U.S. 457 (2001). A holding that an agency may bypass a statutorily mandated review whenever it acts “early” would

invite the same maneuver under other statutes that pair periodic review with substantive standards. More importantly, the D.C. Circuit’s rule is not confined to PM2.5: it would allow EPA to bypass the thorough-review requirement whenever it characterizes a revision as “early” or “more frequent.”

C. Section 109 Does Not Clearly Confer the Asserted Authority

American Trucking supplies the governing starting point. Because § 109 and the NAAQS “are the engine that drives nearly all of Title I of the CAA,” a claimed textual commitment of authority must be clear. *American Trucking Ass’n, Inc.*, 531 U.S. at 468 (2001). Congress “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions.” *Id.*

Section 109 contains no clear authorization for revision without a completed thorough review. 42 U.S.C. § 7409. The D.C. Circuit relied on Section 109 (b)(1)’s statement that standards “may be revised in the same manner as promulgated.” *Id.* But that clause does not clearly authorize EPA to bypass Section 109 (d)(1), much less to do so repeatedly whenever the agency labels its action a reconsideration. *Id.*

The statutory context points in the opposite direction. As Part II explains, the criteria must reflect the latest scientific knowledge, the standards must be based on those criteria, and Congress required a thorough review assisted by an independent scientific committee. The major questions doctrine thus confirms what the statute’s text, structure, history, and practice already show: Congress did not authorize

EPA to revise a NAAQS through a process that omits the safeguard Congress prescribed.

D. *American Trucking* Does Not Resolve the Question Presented

American Trucking's prohibition on considering implementation costs when selecting the level of a NAAQS does not preclude a major-questions inquiry. *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. at 457. The economic and political consequences matter here as evidence of the magnitude of the authority asserted, not as factors EPA should use to set the standard's level. If Congress clearly authorized the off-cycle process EPA used, *American Trucking*, 531 U.S. at 457, would govern the resulting standard-setting decision. The antecedent question is whether Congress supplied that authority at all.

II. The Clean Air Act's Structure, Purpose, and History Confirm Off-Cycle Revisions Require a Thorough Review

A. Section 109(d)(1)'s Text and Structure Require a Thorough Review

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. 42 U.S.C. § 7409(d)(1).

Section 109(d)(1)'s first sentence establishes the process governing NAAQS review and revision. 42 U.S.C. § 7409. It directs the Administrator to “complete a thorough review” of the criteria and standards and to make such revisions as may be appropriate under §§ 7408 and 7409(b). The second sentence permits EPA to “review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.” *Id.*

The second sentence addresses timing, not method. It allows EPA to act before the next five-year deadline; it does not create an alternative, less rigorous method for revising a national standard. It uses the same verbs — “review” and “revise”—that the first sentence governs, and it measures EPA’s authority against what is “required under this paragraph.” *Id.* The “review” EPA may undertake “earlier or more frequently” is thus the review the paragraph already describes: a thorough one. *Id.* Congress did not repeat “thorough review” in the second sentence because it did not need to restate every requirement governing a review undertaken under the same paragraph. *Id.*

The D.C. Circuit’s contrary reasoning also proves too much. If requirements omitted from the second sentence disappear during an off-cycle review, EPA likewise would not need to act “as may be appropriate in accordance with” Sections 108 and 109(b), because those words also appear only in the first sentence. 42 U.S.C. § 7409(d)(1). Yet no one contends that EPA may set an off-cycle NAAQS without protecting public

health with an adequate margin of safety. EPA may answer that Section 109(b) independently governs every standard, however it is revised. 42 U.S.C. § 7409. But that answer concedes the essential point: the second sentence does not operate in isolation and must be read together with the provisions that govern how standards are reviewed and revised. Once that is accepted, there is no textual basis for carrying forward every requirement except the one Congress placed at the center of the review process—the “thorough review” of the criteria and standards. The better reading gives each sentence its natural role: the first specifies the governing process and substantive cross-references; the second permits EPA to use that process earlier or more frequently.

B. On-Cycle and Off-Cycle Revisions Answer the Same Question and Have the Same Legal Effect

Whether EPA acts during the five-year cycle or between cycles, the ultimate question is identical: whether to retain or revise a NAAQS. The legal consequences are likewise identical. A revised standard triggers area designations, state implementation obligations, and permitting consequences without regard to the calendar on which EPA acted. Nothing suggests that Congress considered an off-cycle revision less consequential—or less deserving of scientific rigor—than an on-cycle revision.

The D.C. Circuit’s construction also creates an end run around the statutory process. EPA could complete a five-year review after undertaking the required integrated assessment, then reopen the result months later and impose a different standard using only a targeted supplement. Nothing in that

construction limits the number of off-cycle revisions within a single statutory cycle. The mandatory thorough review would become a procedural formality rather than the safeguard Congress enacted.

C. Scientific Integrity and EPA’s Expertise Require a Thorough Review

Even apart from the express words “thorough review,” the statutory standard cannot sensibly be applied through a truncated scientific process. The Administrator must determine what level is “requisite to protect the public health” with “an adequate margin of safety.” 42 U.S.C. § 7409(b)(1). Because *American Trucking* excludes implementation cost from selecting that level, the quality and completeness of the scientific record carry exceptional weight. 531 U.S. at 457. A truncated review omits the integrated, multidisciplinary assessment through which EPA, CASAC, and the public ordinarily test the agency’s scientific judgment.

Congress delegated NAAQS decisions to EPA because of the agency’s scientific expertise. That expertise is genuinely exercised through an integrated assessment, independent CASAC review, and public participation—not by selecting a limited portion of the record after a completed review has produced an unwanted result. EPA itself made that point in 2020 when it described the rigorously reviewed studies and their integrated assessment as the “most reliable source of scientific information” for NAAQS decisions. *Review of the National Ambient Air Quality Standards for Particulate Matter*, 85 Fed. Reg. 82,684, 82,687 (Dec. 18, 2020).

Section 109(d)(1)’s text is reinforced by the rest of the statutory scheme. 42 U.S.C. § 7409(d)(1). Section 108(a)(2) requires air-quality criteria to “accurately reflect the latest scientific knowledge.” 42 U.S.C. § 7408(a)(2). Section 109(b)(1) requires standards to be “based on such criteria.” 42 U.S.C. § 7409(b)(1). And Section 109(d)(2) creates CASAC as an “independent scientific review committee” to advise EPA concerning the criteria and standards. 42 U.S.C. § 7409(d)(2). These provisions reflect Congress’s judgment that nationally binding air-quality standards should rest on an integrated and independently reviewed scientific record.

EPA itself recognized as much in addressing ozone. In October 2021, EPA announced that it would reconsider the 2020 decision retaining the ozone NAAQS—a reconsideration parallel to the one it undertook for PM_{2.5}. *EPA Initiates New Review of the Ozone National Ambient Air Quality Standards to Reflect the Latest Science*, U.S. Env’t Prot. Agency (Aug. 21, 2023), <https://www.epa.gov/newsreleases/epa-initiates-new-review-ozone-national-ambient-air-quality-standards-reflect-latest> (discussing 2021 announcement). Rather than complete that reconsideration off-cycle, Administrator Regan folded it into a new statutory review, explaining:

I have decided that the best path forward is to initiate a new statutory review of the ozone NAAQS [National Ambient Air Quality Standards] and the underlying air quality criteria and to wrap the EPA’s reconsideration process of the 2020 ozone NAAQS decision into that review. This approach would facilitate additional work to address

CASAC's advice, as well as consideration of newer studies and updated analyses, in the context of a full and systematic review of the air quality criteria and standards, with the opportunities for CASAC advice and public engagement that such a process involves.

Letter from Michael S. Regan, Administrator, U.S. Env't Prot. Agency, to Elizabeth A. ("Lianne") Sheppard, Chair, CASAC (Aug. 18, 2023).

Administrator Regan's reasoning applies with equal force to PM_{2.5}. EPA cannot plausibly maintain that a full and systematic review was the "best path forward" for an off-cycle ozone reconsideration while insisting that a targeted supplement was legally sufficient to revise the PM_{2.5} standard.

D. Executive Practice Confirms the Independent Importance of the Statutory Review Process

Past NAAQS reconsiderations confirm that the Executive Branch has treated the statutory review process as having independent importance and has treated the decision whether to proceed with an optional off-cycle revision as distinct from the health-based judgment about a standard's level.

In 2009, EPA announced that it would reconsider the 2008 ozone standards. National Ambient Air Quality Standards for Ozone, 75 Fed. Reg. 2938, 2943 (Jan. 19, 2010). EPA drafted a final rule tightening the standard and submitted it for review in July 2011. On September 2, 2011, the Office of Information and Regulatory Affairs (OIRA) returned the rule to EPA, explaining that the President "does not support finalizing the rule at this time." Letter from Cass R.

Sunstein, Administrator, OIRA, to Lisa P. Jackson, Administrator, EPA (Sept. 2, 2011). OIRA acknowledged that the Clean Air Act forbids consideration of cost “in deciding on the stringency of national ambient air quality standards,” but explained that an immediate off-cycle revision was not mandatory, could create needless uncertainty, would rely on evidence that was becoming outdated, and would precede an already forthcoming scientific assessment. *Id.*

OIRA did not suggest that implementation considerations could determine the permissible level of an ozone standard. The episode instead confirms that the Executive Branch treated the decision on whether to complete an optional off-cycle reconsideration as distinct from the health-based judgment governing the standard’s level. That history reinforces the independent importance of the statutory review process without altering *American Trucking’s* prohibition on considering implementation cost when setting the NAAQS. 531 U.S. 457 (2001).

EPA took the same process-centered approach in 2023, when Administrator Regan folded the ozone reconsideration into the next statutory review rather than completing it off-cycle. Letter from Michael S. Regan to Dr. Lianne Sheppard, *supra*. These episodes confirm that EPA historically understood the discretionary decision whether to review is a distinct question.



CONCLUSION

The petitions for writs of certiorari should be granted.

Respectfully submitted,

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October 2, 2026