ORAL ARGUMENT HELD SEPTEMBER 14, 2023

Case No. 22-1031 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF TEXAS, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

SUPPLEMENTAL BRIEF OF STATE RESPONDENT-INTERVENORS

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GLOSSARY

EPA	U.S. Environmental Protection Agency
EPA Br.	EPA's Final Answering Brief (ECF No. 1996730)
Fuel Br.	Final Brief for Private Petitioners (ECF No. 1996915)
Fuel Reply	Final Reply Brief for Private Petitioners (ECF No. 1996916)
ICCT Amicus Br.	Brief of Amicus Curiae International Council on Clean Transportation in support of Respondents (ECF No. 1988480)
NHTSA	National Highway Traffic Safety Administration
PIO Supp. Br.	Supplemental Brief for Respondent-Intervenor Public Interest Organizations
Rule	U.S. EPA, "Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards," 86 Fed. Reg. 74,434 (Dec. 30, 2021)
State-PIO Intv. Br.	Final Brief of State and Public Interest Respondent-Intervenors (ECF No. 1996908)
Texas Br.	Final Opening Brief for State Petitioners (ECF No. 1996773)

INTRODUCTION AND SUMMARY OF ARGUMENT

On July 29, 2024, this Court ordered the parties to submit supplemental briefs addressing two questions: (1) the extent to which *Ohio v. EPA*, 98 F.4th 288 (D.C. Cir. 2024), is relevant in this case to petitioners' standing, and (2) the extent to which *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), is relevant to the issues of statutory interpretation presented in these cases. ECF No. 2067052. In response, State Respondent-Intervenors respectfully submit that neither case affects the resolution of these petitions. Because *Ohio* applied well-established law to distinct facts, it sheds little to no light on whether any Petitioner has established standing here—a question on which State Respondent-Intervenors continue to take no position. As to *Loper Bright*, Respondents' plain text statutory arguments do not rely on the deference doctrine rejected in that case.

ARGUMENT

I. THE STANDING PRINCIPLES REITERATED IN *OHIO* APPLY HERE, BUT THE FACTS OF THAT CASE ARE DISTINCT

The *Ohio* decision rests on well-established standing principles that are relevant in this case, as they are in all cases. For example, "'[a] petitioner bears the burden of establishing each'" element of standing. *Ohio*, 98 F.4th at 300 (quoting *Chamber of Com. of U.S. v. EPA*, 642 F.3d 192, 200 (D.C.

Cir. 2011)). And "absent 'good cause shown,' a petitioner whose standing is not readily apparent must show that it has standing in "its opening brief." *Id.* at 300 (quoting *Sierra Club v. EPA*, 292 F.3d 895, 900-01 (D.C. Cir. 2002)). The *Ohio* panel applied these and other longstanding principles to the particular facts of that case. However, because those facts are distinct from the facts here, that application seems to have little relevance in this case.

In *Ohio*, Petitioners sought review of EPA's 2022 reinstatement of a Clean Air Act preemption waiver that EPA had originally granted to California in 2013. 98 F.4th at 297. That 2013 waiver permitted California to enforce certain vehicle emission standards that the State had adopted in 2012. *Id.* Those standards required automakers to improve the emissions of the vehicles they would sell in California in each model year from 2017 to 2025. *Id.* In response, automakers began making the necessary "investments to meet [those] requirements." *Id.* at 297. And, by the time the *Ohio* petitions were filed ten years later, automakers were "selling *more* qualifying vehicles in California than the State's standards require." *Id.* at 305 (internal quotation marks omitted). Here, by contrast, the federal standards at issue in this case were challenged within months of their promulgation. Automakers had not therefore spent a decade planning for compliance with these particular standards before Petitioners filed suit.

The peculiar history of the waiver at issue in *Ohio* also had unique implications for Petitioners' standing in that case. When EPA reinstated the 2013 waiver, it did so for all model years (2017 through 2025) covered by that original waiver, thereby reversing a 2019 decision to withdraw the waiver for those same model years. *Ohio*, 98 F.4th at 298. For this reason, the administrative record in *Ohio* addressed the effects of California's standards over the entire regulatory period (again, model years 2017 through 2025) in gross. That record thus generally did not speak to current market conditions or distinguish between the past and future effects of the underlying California standards at issue. *See id.* at 302. Consequently, there was a "paucity of evidence in the record regarding … redressability"—*i.e.*, whether and when automakers would change their plans *in the limited model years that remained* if the waiver reinstatement were vacated. *Id.* at 303.

The *Ohio* petitioners nonetheless chose to "treat[] redressability as a foregone conclusion" in their opening brief. 98 F.4th at 303. They cited no record evidence and provided no additional evidence that could establish that element of standing. *Id.* Then, when confronted with evidence about current market conditions in California suggesting that Petitioners' alleged injuries were *not* redressable, "neither State nor Fuel Petitioners meaningfully addressed the redressability of their economic injuries in their

reply briefs." *Id.* at 305. The *Ohio* panel thus correctly concluded that "the record evidence, coupled with the filings of the EPA and intervenors, provide this Court with no basis to conclude that Petitioners' claims are redressable—a necessary element of standing that Petitioners bear the burden of establishing." *Id.*

Here, however, EPA's record supports the promulgation of emissions standards applicable only to future model years. That record thus addresses current market conditions and examines the likely effects of these standards in those future model years and beyond.[1] And, unlike in *Ohio*, no party provided the Court with evidence of current market conditions that called redressability into doubt.

Given these distinctions between the two cases, the *Ohio* decision appears to have little to no bearing on Petitioners' standing here—beyond providing another illustration of how well-established standing principles apply to particular facts.

[1] By highlighting the distinctions in the administrative records in *Ohio* and here, State Respondent-Intervenors are not asserting that the record in this case actually establishes Petitioners' standing. As noted, State Respondent-Intervenors continue to take no position on whether any Petitioner here had established standing.

II. RESPONDENTS HAVE THE BEST READING OF THE STATUTE UNDER *LOPER BRIGHT*

In *Loper Bright*, the Court overruled the deference doctrine established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). That change has no impact on this case's questions of statutory interpretation because Respondents' defense of the Rule does not rely on agency deference, but on the Clean Air Act's plain text. While *Loper Bright* rejects the *Chevron* "fiction" of implicit delegations from ambiguity, it recognizes the best reading of a statute may be that Congress has delegated discretionary authority to an agency, and it directs courts to respect those delegations. 144 S.Ct. at 2263. Clean Air Act section 202 is explicitly one such delegation, and that statute's text and structure show the Rule under review falls well within the boundaries of EPA's delegated authority.

Loper Bright in no way derogates from the exhaustion and timeliness requirements that the Clean Air Act expressly imposes on all petitioners. The Court's analysis still must begin (and should end) there. If anything, courts' "due respect" for Executive Branch views—which *Loper Bright* reaffirms, 144 S.Ct. at 2257—counsels for faithful application of the exhaustion requirement, which ensures that the reviewing court has the benefit of the agency's expertise on the precise questions at issue.

A. The Clean Air Act Delegates Authority to Set Emissions Standards Based on EPA's Scientific and Technological Judgments

EPA's authority for the Rule derives from explicit delegations—in particular, section 202(a) of the Clean Air Act—which *Loper Bright* instructs courts to recognize and respect. 144 S.Ct. at 2263, 2268. The Court's limited role in such cases is to determine the "outer statutory boundaries" of the agency's authority and ensure the agency has reasonably exercised its authority within those bounds. *Id.* at 2268.

Here, Section 202(a)(1) commands EPA's Administrator to "*by regulation prescribe* … standards applicable to the emission of any pollutant from any class or classes of new motor vehicles [or engines], which *in his judgment* cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7521(a)(1) (emphases added). Section 202(a)(2) specifies that such "regulation … shall take effect after such period as the Administrator *finds necessary* to permit the development and application of the requisite technology, giving *appropriate consideration* to the cost of compliance within such period." *Id.* § 7521(a)(2) (emphases added).

This is precisely the type of delegation that *Loper Bright* identifies as "empower[ing] an agency to … regulate subject to the limits imposed by a

term or phrase that 'leaves agencies with flexibility.'" 144 S.Ct. at 2263 (quoting *Michigan v. EPA*, 576 U.S. 743, 752 (2015)). Section 202(a)(1)'s endangerment and contribution clauses explicitly direct EPA to exercise its scientific "judgment" as to what air pollution is dangerous and the classes of vehicles or engines that cause or contribute to that pollution. 42 U.S.C. § 7521(a)(1). The Supreme Court has thus recognized that Section 202(a)(1) intentionally confers "regulatory flexibility" on EPA. *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007). Indeed, *Loper Bright* pointed to parallel language in the Clean Water Act, requiring EPA to establish effluent limitations to "assure … the protection of public health," as an example of a delegation of discretionary authority. 144 S.Ct. at 2263 n.6. Similarly, Section 202(a)(2) requires EPA to "find[]" how much lead time is necessary to develop and apply the requisite control technology, with "appropriate consideration" of compliance costs. *Id.* § 7521(a)(2). These provisions expressly commit the salient scientific and technological questions to EPA's "judgment," subject to arbitrary-and-capricious review by this Court for reasoned decisionmaking. *See Loper Bright*, 144 S.Ct. at 2263 (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983)); 42 U.S.C § 7607(d)(9); EPA Br. 25-26.

Likewise, Section 202 and other Title II provisions empower EPA "to prescribe rules to 'fill up the details' of [the] statutory scheme." *Loper Bright*, 144 S.Ct. at 2263 (quoting *Wayman v. Southard*, 10 Wheat. 1, 43 (1825)). For example, while Section 202(b) prescribes specific numerical limits for hydrocarbon and carbon monoxide emissions for new vehicles in model years 1977 to 1979, Section 202(a) leaves to EPA the determination of standards for other dangerous emissions and for other model years not specifically prescribed. 42 U.S.C. § 7521(a)(1), (b). Indeed, Section 202 generally follows this structure: (i) detailed prescriptions for deploying EPA's 202(a) authority in specific circumstances (with respect to certain pollutants, certain vehicle classes, certain model years, and/or certain technologies); and (ii) broad authority for EPA to regulate according to its judgment outside those circumstances. *Compare* 42 U.S.C. § 7521(a)(1)-(2), *with id.* § 7521(a)(3), (a)(6), (b), (f), (g), (h), (i), (j), (k), (l), (m).

In the same way, the phrase "by regulation prescribe … standards" in Section 202(a)(1) requires EPA to formulate the regulatory structure for vehicle emission standards. Section 202 itself illustrates the diverse ways to express a "standard," for example, as a grams-per-mile maximum limit, 42 U.S.C. § 7521(b)(1)(A), or as a fleet-percentage phase-in schedule for a specific control technology, *id.* § 7521(a)(6). For model years and emissions

not covered by specific prescriptions, Congress left EPA to choose the form of such standards. State-PIO Intv. Br. 12, 15-16. And in Section 206, Congress expressly delegated to EPA the discretion to determine how best to evaluate and document a vehicle's conformity with its Section 202 regulations. 42 U.S.C. § 7525(a)(1); State-PIO Intv. Br. 15.

Loper Bright's framework here is clear: Courts are to "police the outer statutory boundaries" of such express delegations and ensure EPA rationally exercised its delegated discretion within those boundaries. 144 S.Ct. at 2268; *see also id.* at 2263 (A court fulfills its judicial function by "recognizing constitutional delegations, fixing the boundaries of the delegated authority, and ensuring the agency has engaged in reasoned decisionmaking within those boundaries." (cleaned up)). In doing so, a court should, as before *Loper Bright*, be cognizant not to erect constraints on EPA's expressly delegated discretion that Congress itself did not see fit to prescribe. *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 222 (2009) ("It is eminently reasonable to conclude [the statute's] silence is meant to convey nothing more than [Congress's] refusal to tie the agency's hands …."). And reasoned decision-making continues to be judged by the deferential *State Farm* standard. *See Loper Bright*, 144 S.Ct. at 2263.

B. The Rule Falls Comfortably within the Statutory Boundaries of EPA's Authority

The Clean Air Act's text and structure supports EPA's authority to set technology-based, fleetwide-average standards for greenhouse gas emissions that reflect the growing application of zero-emission technologies. State-PIO Intv. Br. 6-11; *see also* PIO Supp. Br. 7-10. The ordinary meaning of Section 202(a)'s text is the primary interpretive resource for determining the statute's best meaning and thereby "fixing the boundaries of the delegated authority." *Loper Bright*, 144 S.Ct. at 2263 (cleaned up). And the text is the primary resource that State and Public Interest Respondent-Intervenors rely on here, reinforced by this Court's prior interpretations of Section 202(a) or similar statutory text that remain authoritative after *Loper Bright*.

1. Most of Respondents' statutory arguments follow directly from Section 202(a)'s text, which speaks for itself. *See* PIO Intv. Supp. Br. 7-10. Thus, in directing EPA to prescribe standards with lead time for "the development and application of the requisite technology," Section 202(a) plainly authorizes standards that reflect a greater application of emerging control technologies, under the ordinary meaning of those terms. State-PIO Intv. Br. 6-7. The statutory definition of "motor vehicle"—*i.e.*, "any self-propelled vehicle designed for transporting persons or property on a street or

highway," 42 U.S.C. § 7550(2)—plainly encompasses zero-emission vehicles. State-PIO Br. 17. And zero-emission vehicles are plainly "vehicles … designed as complete systems … to prevent or control … pollution." 42 U.S.C. §§ 7521(a)(1), 7550(2); State-PIO Intv. Br. 7-8, 19; *see also* PIO Supp. Br. 7-8. Before and after *Loper Bright,* the Court need not look further to conclude that EPA stayed within these statutory boundaries.

2. This Court has already construed Section 202(a) to require EPA to exercise its technical judgment in projecting the future development and application of emission controls, *NRDC v. EPA*, 655 F.2d 318, 328 (D.C. Cir. 1981), and to push the auto industry toward cleaner technologies, *Int'l Harvester Co. v. Ruckelshaus*, 478 F.2d 615, 622-23 (D.C. Cir. 1973). State-PIO Intv. Br. 7-8. These cases predate *Chevron* and remain authoritative judicial precedent on the scope and character of EPA's Section 202 authority. And if *Loper Bright* did "not call into question prior cases that relied on the *Chevron* framework," 144 S.Ct. at 2273, *a fortiori* it did not call into question cases that preceded the *Chevron* framework.

Of course, EPA's technical judgments remain subject to arbitrary-and-capricious review, but here, Petitioners have not challenged *any* of EPA's determinations about zero-emission technologies' (or other technologies')

development and application, necessary lead time, or manufacturer costs as arbitrary or capricious. Fuel Br. 61-69; Texas Br. 24-28.

3. In a few instances, State and Public Interest Intervenors' brief cites cases construing analogous statutes other than the Clean Air Act, including cases that relied in part on the *Chevron* framework. But the cited portions of those cases remain relevant even outside that framework. For example, in deciding the scope of EPA's discretion to judge the pollution contribution of "any class or classes of new motor vehicles," 42 U.S.C. § 7521(a)(1), this Court may properly rely on cases finding that "'any' has an expansive meaning," *Ali v. BOP*, 552 U.S. 214, 219 (2008), or that "class" is an extremely "flexible" term, *Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 947 (D.C. Cir. 2004). State-PIO Intv. Br. 18-19; *see also* PIO Supp. Br. 8-9. The Court's construction of "class" did not depend on *Chevron* deference, although *Northeast Maryland Waste Disposal Authority* generally was decided under the *Chevron* framework; rather, such glosses on statutory text are "interpretive tools" that "courts use every day," *Loper Bright*, 144 S.Ct. at 2266, if not plain "common sense," *Koons Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 63 (2004).

Likewise, the Court may properly rely on the Supreme Court's insight that "statutory silence" can "convey nothing more than [Congress's] refusal

to tie the agency's hands." *Entergy*, 556 U.S. at 222 (upholding EPA's Clean Water Act interpretation).[2] After all, a reading that is "eminently reasonable" under *Chevron*'s "step two" may also be the "best reading" outside *Chevron*. *Id.*; *see also Catawba Cnty. v. EPA*, 571 F.3d 20, 36 (D.C. Cir. 2009) (This Court has "consistently recognized" that Congress's "mandate in one section and silence in another often suggests … a decision not to mandate any solution in the second context, i.e., to leave the question to agency discretion." (citing cases)). That inference is consistent with *Loper Bright*'s recognition that Congress often delegates to an agency general rulemaking authority cabined by specific "outer statutory boundaries," with the agency otherwise left to "fill up the details." 144 S.Ct. at 2263, 2268.

C. *Loper Bright* Underscores the Importance of the Clean Air Act's Mandatory Exhaustion Requirement

Loper Bright offers no grounds to excuse Petitioners' failure to exhaust their statutory challenges in the comment period; rather, it highlights a core reason for enforcing the Clean Air Act's mandatory exhaustion requirement. *See* 42 U.S.C. § 7607(d)(7)(B); *Ross v. Blake*, 578 U.S. 632, 639 (2016)

[2] *See* State-PIO Intv. Br. 15-16 (citing *Entergy* in response to Fuel Petitioners' argument that, by directing NHTSA to adopt fleet-average fuel economy standards in the Energy Policy & Conservation Act, Congress was indicating EPA lacked authority to adopt fleet-average emission standards in the Clean Air Act, Fuel Br. 47-48).

("[M]andatory exhaustion statutes … establish mandatory exhaustion regimes, foreclosing judicial discretion."). In overruling *Chevron* deference, the Supreme Court charged courts in exercising their independent judgment in statutory interpretation to continue to provide due respect for an agency's expertise and avoid judicial policymaking. 144 S.Ct. at 2267-68. The doctrines of *State Farm* and *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), which *Loper Bright* reaffirms, ensure judges' statutory interpretations are informed by the agency's scientific and technical knowledge, its experience administering the statute, and any "factual premises within the agency's expertise." *Loper Bright*, 144 S.Ct. at 2267 (cleaned up); *see Skidmore*, 323 U.S. at 140. But here, Petitioners' failure to present their arguments to EPA in the comment period deprived the Court of this resource and impedes its interpretive task. Accordingly, the Court should enforce the Clean Air Act's exhaustion bar.

Although Petitioners frame their challenges as pure legal arguments about the scope of Section 202(a)'s delegation, they assume (or simply bulldoze over) a host of technical and record questions, which receive *State Farm* deferential review, and implicate EPA's "body of experience and informed judgment" under *Skidmore*:

"***Forced electrification***." Petitioners argue "EPA lacks statutory authority to set greenhouse-gas emission standards that effectively mandate electric vehicles," Fuel Reply 9, but cannot identify a single comment that presented EPA with this "de facto mandate" theory. *See, e.g.*, *id.* (citing comments that characterized the proposal as "*encouraging* zero-emission vehicles" or as "an EV *subsidy* program" (emphases added)).[3] Because of this failure to exhaust, EPA never brought its considerable technical expertise to bear on the question, *Does the Rule effectively "force" automakers to produce even a single additional electric vehicle?*[4] Plenty of evidence already suggests it does not, and Petitioners have never established that it will. EPA Br. 54-55; State-PIO Intv. Br. 27; ICCT Amicus Br. 15-19.

[3] The Court's distinction between a legal mandate and an effective one is important here. 9/14/23 Oral Arg. Tr. 41:5-24. Although EPA had the opportunity to explain that the Rule does not legally require the production of electric vehicles, J.A. 1076; *see also* Resp. to Comments, EPA-HQ-OAR-2021-0208-0851, at 2-7 (declining to "establish a zero-emissions vehicles (ZEV) mandate"), no petitioner has identified a comment preserving a "de facto" or "effective" mandate theory.

[4] EPA's expertise is highly salient to the Court's resolution of what "forced electrification"—something Petitioners avoid defining—should even mean. *See* 9/14/23 Oral Arg. Tr. 34:3-40:18, 73:17-74:17. Assuming for argument that that notion is relevant to EPA's authority, whether the present Rule satisfies any one of the possible meanings of "forced electrification" is a technical question that the Court should not endeavor to answer without the benefit of EPA's technical modeling.

Fleet-average standards. EPA's decades of experience implementing fleet-average standards consistent with Section 205-207's certification and compliance provisions belies the Fuel Petitioners' arguments that these provisions are "incompatible" with fleet-average standards. Fuel Br. 43-47; 42 U.S.C. §§ 7524, 7525, 7541; *see* PIO Supp. Br. 11. But by failing to give EPA notice of these arguments, Petitioners deprived this Court of the opportunity to have that experience reflected in the administrative record, leaving it to rely on the litigants' briefs. *See* Fuel Reply 9;[5] EPA Br. 68-73; State-PIO Intv. Br. 12-15.

Averaging zero-emission and emitting vehicles together. While Petitioners argue as a matter of statutory construction that EPA must set its emission standards only for vehicles that emit the regulated pollutant, their argument is ultimately a challenge to EPA's judgment of how best to group vehicles into classes. *See* Fuel Br. 52-57. After all, no one disputes that the class defined as "light-duty vehicles" contributes to dangerous greenhouse-gas pollution. EPA Br. 77-78; State-PIO Intv. Br. 18-19. Even if Petitioners

[5] The best Fuel Petitioners can do to establish exhaustion here is a comment obliquely questioning EPA's authority to implement a "trading program." Fuel Reply 9 (internal brackets omitted). But "trading" is not the same as a fleet-average standard, which involves no trading, crediting, or similar transactions.

could still challenge that consistent and longstanding classification, State-PIO Intv. Br. 19, *Loper Bright* directs the Court to review that exercise of delegated discretion solely for reasoned decisionmaking under *State Farm*. 144 S.Ct. at 2263; *see* PIO Supp. Br. 8-9. But at minimum, such a review demands EPA's reasons be part of the record, which, again, Petitioners' failure to exhaust has prevented. *Cf.* Fuel Reply 9 (making no attempt to show the "emitting vehicle" argument was preserved).

***Vehicles designed as complete systems*.** Although Petitioners argue that battery-electric vehicles fall outside the ordinary meaning of "vehicles designed as complete systems … to prevent and control … pollution," Fuel Reply 27-29, EPA's expertise in automotive pollution control technology is a significant resource to the Court even as a matter of pure statutory construction. *Loper Bright*, 144 S.Ct. at 2267; *Skidmore*, 323 U.S. at 140.

In comments on EPA's multipollutant standards for 2027-2032 light- and medium-duty vehicles, 89 Fed. Reg. 27,842 (Apr. 18, 2024) (the "2024 Rule"), the same parties who are Petitioners here filed comments objecting to reading "complete systems" to cover battery-electric systems—and EPA

responded thoroughly.[6] The panel hearing the challenges to the 2024 Rule in *Kentucky v. EPA*, No. 24-1087 (D.C. Cir.), will thus have the full benefit of the agency's technical expertise on that interpretive question—and on Petitioners' "forced electrification" theory,[7] fleet-average standards,[8] and the "emitting vehicles" argument,[9] among others—unlike here.

All these interpretive resources, available to the parties and the Court in *Kentucky*, are underdeveloped in this litigation because Petitioners never presented these questions to EPA with reasonable specificity. That artificial cropping of the administrative record is as prejudicial to the judicial task of this Court as it is unfair to Respondents, and the Court should reject the Petitioners' statutory arguments as unpreserved.

CONCLUSION

For the foregoing reasons and those set forth in the answering briefs, the petitions should be denied.

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[6] *See* Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles: Response to Comments, EPA-HQ-OAR-2022-0829-5743, at 355-58 (Mar. 2024) (2024 RTC), https://www.regulations.gov/document/EPA-HQ-OAR-2022-0829-5743.

[7] 2024 RTC at 309-16; 89 Fed. Reg. at 27,855-56 & Table 3, 28,076-77 & Tables 163-69.

[8] 2024 RTC at 329-48.

[9] 2024 RTC at 348-54.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the Court's July 29, 2024 Order (ECF No. 2067052) because it contains 3,811 words. I further certify that this motion complies with the typeface requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared using a proportionally spaced typeface (Times New Roman) in 14-point font.

Dated: August 19, 2024

/s/ Theodore A. McCombs
Theodore A. McCombs

CERTIFICATE OF SERVICE

I certify that on August 19, 2024 I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

I certify that all other participants in this case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

Dated: August 19, 2024 */s Theodore McCombs*