



the alternative that their petitions for review (Case No. 16-1443: Sierra Club and Appalachian Mountain Club; Case No. 16-1448: State of Delaware) be severed from the above-captioned matter.

The United States opposes the relief requested in the Cross-Motion to Sever. The consolidated petitions in this matter each challenge the basic scope and structure of EPA's final rule, the "Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS," 81 Fed. Reg. 74,504 (Oct. 26, 2016) (the "CSAPR Update"). The Statements of Issues filed by Public Health Petitioners and the State of Delaware suggest that they believe the CSAPR Update is insufficiently stringent, while the remaining petitioners (Industry and other State Petitioners) suggest they believe the CSAPR Update is overly stringent. Both sets of petitioners propose to address EPA's application in this Rule of the Clean Air Act's "Good Neighbor Provision," 42 U.S.C. § 7410(a)(2)(D), including the proper treatment of "nonattainment" versus "maintenance" areas, how to determine a state's contribution, and the volume and apportionment of allocations. *Compare, e.g.*, ECF Nos. 1657777 (Public Health Petitioners' Statement of Issues) & 1659148 (State of Delaware's Statement of Issues), *with* ECF Nos. 1653312 (State of Wisconsin et al.'s Statement of Issues) & 1657673 (UARG's Statement of Issues). As a consequence, severing Public Health Petitioners' and the State of Delaware's petitions would almost certainly require the United States and the numerous intervenors (many of whom are also parties) to engage in duplicative briefing regarding the fundamental features of the CSAPR Update.

Duplicative briefing, and the preparation of potentially duplicative judicial opinions, would be an extremely wasteful use of the Court's and the parties' resources.

For this reason, the United States opposes the relief requested in the Cross-Motion to Sever and requests that Case Numbers 16-1443 and 16-1448 remain consolidated for purposes of briefing.

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Respectfully submitted,

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DATED: August 17, 2017

/s/ Chloe H. Kolman

**CERTIFICATE OF SERVICE**

I hereby certify that on August 17, 2017, I electronically filed the foregoing EPA's Response to State of Delaware and Public Health Petitioners' Alternative Cross-Motion to Sever their Petitions with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Chloe H. Kolman