

within the time specified for judicial review; and (2) the objection is of central relevance to the outcome of the rule.¹⁴ An objection is of central relevance if it “provides substantial support for the argument that the regulation should be revised.”¹⁵ EPA may grant a 90-day stay pending reconsideration of the Final Rule.

Here, EPA deprived stakeholders of sufficient notice and opportunity to comment and introduced new provisions or rationales in the Final Rule for which commenters had no notice and that were not logical outgrowths of what was proposed.¹⁶ Section 307(d)(7)(B) of the CAA thus requires EPA to “convene a proceeding for reconsideration of the rule” and impart all the procedural rights that “would have been afforded had the information been available at the time the rule was proposed.”¹⁷

SunCoke respectfully requests that EPA grant this Petition for Reconsideration and Stay Pending Reconsideration. An administrative stay of the effect of the Final Rule and all compliance deadlines is necessary and appropriate while EPA considers and addresses the numerous errors in the Final Rule resulting from the rushed rulemaking.

A. EPA failed to provide adequate opportunity to comment on this rulemaking, violating the APA.

It is indisputable that EPA was forced to rush this rulemaking to meet a federal district court’s deadline, depriving EPA of its opportunity to thoughtfully consider all relevant information in this complex rulemaking proceeding. In turn, SunCoke was deprived of proper notice and adequate time to review and comment on the Proposed Rule, which is not permissible.¹⁸

Section 307(h) of the CAA provides: “It is the intent of Congress that, consistent with the policy of subchapter II of chapter 5 of Title 5, the Administrator in promulgating any regulation under this chapter, *including a regulation subject to a deadline*, shall ensure a reasonable period for public participation of at least 30 days, . . .”¹⁹ The APA demands that agencies “give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.”²⁰ Public participation is “crucial” to sound rulemaking because it “ensure[s] that agency regulations are tested via exposure to diverse public comment . . . to ensure fairness to affected parties, and . . . to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby

¹⁴ 42 U.S.C. § 7607(d)(7)(B).

¹⁵ *Coal. for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 125 (D.C. Cir. 2012), *aff’d in part, rev’d in part on other grounds sub. nom. Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302 (2014); *see also* 42 U.S.C. § 7607(d)(7)(B).

¹⁶ *See Env’t Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005). “[I]f the final rule deviates too sharply from the proposal, affected parties will be deprived of notice and an opportunity to respond to the proposal.” *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983). “[A]mbiguous comments and weak signals from the agency g[i]ve petitioners no . . . opportunity to anticipate and criticize the rules or to offer alternatives. Under these circumstances, the . . . rules exceed the limits of a logical outgrowth.” *Int’l Union, UMW v. MSHA*, 407 F.3d 1250, 1261 (D.C. Cir. 2005) (internal citations omitted).

¹⁷ 42 U.S.C. § 7607(d)(7)(B).

¹⁸ *Citizens for Pennsylvania’s Future*, 469 F. Supp. 3d at 934.

¹⁹ 42 U.S.C. § 7607(h) (emphasis added).

²⁰ 5 U.S.C. § 553(c).