

L. SunCoke is likely to succeed on the merits.

1. SunCoke's petition for a stay pending review is likely to be granted on the merits.

As set forth above in Section I, EPA denied SunCoke and other stakeholders adequate notice and opportunity. The CAA requires EPA to provide “a reasonable period for public participation of at least 30 days.”⁹³ The APA requires agencies to provide “a reasonable opportunity to comment and submit data in support of, or in opposition to, the rules proposed.”⁹⁴ Because both statutes demand a reasonable opportunity to comment, cases addressing APA’s standard should also apply in the CAA context.

Courts are not blind to the complexity of a rulemaking when determining whether a comment period is sufficient. For example, in *Centro Legal de la Raza v. Executive Office for Immigration Review*, the court concluded that the plaintiffs were likely to succeed on their claim that a 30-day comment period was insufficient under the APA on a final rule that changed the procedures and regulations governing immigration courts.⁹⁵ Because the rule was technical and procedural in nature, the court considered 30 days insufficient because of “COVID-19 pandemic and the numerous other concurrent regulatory changes to the immigration system.”⁹⁶ The court issued a nationwide injunction of the rule.

The D.C. Circuit agreed with the rationale set forth in *Centro Legal de la Raza*, explaining that a 30-day comment period is viewed as “generally the *shortest time* period for interested persons to meaningfully review a proposed rule and provide informed comment.”⁹⁷ Thirty days is “cut[ting] the comment period to the bone.”⁹⁸ In fact, two Executive Orders state that agencies should “generally” or “in most cases” provide *at least 60 days for comments*.⁹⁹ Agencies are also directed to provide “timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded.”

EPA did not follow these directives. Not only did it not provide the recommended comment period of “at least 60” days, EPA only provided 45 days for the public to address amendments to *two separate rules*—rules that regulate “among the most complex of the nearly 200 source categories,” as well as a large volume of highly technical documents.¹⁰⁰ EPA could have sought another extension to meet the court’s May 23, 2024 deadline, but it chose not to. Instead, it opted to limit the

⁹³ 42 U.S.C. § 7607(h).

⁹⁴ 5 U.S.C. § 553; see also *Action For Children's Television v. FCC*, 564 F.2d 458, 471 (D.C. Cir. 1977).

⁹⁵ *Centro Legal de la Raza v. Executive Office for Immigration Review*, 524 F. Supp. 3d 919 (N.D. Cal. 2021).

⁹⁶ *Id.* at 920.

⁹⁷ *Catholic Legal Immigration Network, Inc. v. Executive Office for Immigration Review*, Not Reported in Fed. Supp. 2021 WL 3609986, at *3 (D.D.C. Apr. 4, 2021) (citing *Nat'l Lifeline Ass'n v. FCC*, 921 F.3d 1102, 1117 (D.C. Cir. 2019) (holding “two-week period . . . was not an adequate period for eliciting meaningful comments”); see also *Petry v. Block*, 737 F.2d 1193, 1202 (D.C. Cir. 1984) (describing a 30-day period as “cut[ting] the comment period to the bone”).

⁹⁸ *Petry v. Block*, 737 F.2d 1193, 1202 (D.C. Cir. 1984).

⁹⁹ See Exec. Order 13,563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 18, 2011); Exec. Order 12,866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (Sept. 30, 1993) (emphasis added).

¹⁰⁰ 88 Fed. Reg. 55858 (“Comments must be received on or before October 2, 2023.”); *Citizens for Pennsylvania's Future*, 469 F. Supp. 3d at 933.