

unnecessary compliance costs on regulated entities. EPA may also use a stay pending reconsideration to avoid any confusion in the regulated industry from EPA implementing and then quickly revising its regulatory requirements. Staying the effective date of the rule until the agency completes its reconsideration process avoids any concerns about regulatory whiplash.

SunCoke respectfully requests that EPA exercise its full authority to stay the effectiveness of the Final Rule pending reconsideration. The Final Rule imposes compliance obligations on SunCoke and its facilities that would require immediate and significant costs to comply by the Final Rule's compliance deadline. Staying the Final Rule during reconsideration will avoid imposing these compliance costs prematurely and avoid confusion among facility personnel from learning the Final Rules' potentially unnecessary requirements. A stay would afford EPA the time needed to fully reconsider its Final Rule without imposing costs on the regulated industry in the meantime.

III. Request for Stay Pending Judicial Review Pursuant to Section 705 or for EPA to Amend the Final Rule

Pursuant to 5 U.S.C. § 705, SunCoke respectfully requests that EPA stay the Final Rule pending judicial review on the grounds that EPA exceeded its statutory authority, failed to follow procedures required by the APA and CAA for agency rulemaking, did not adequately consider costs or assess benefits, and did not adequately respond to all significant comments. While judicial review is pending, section 705 of the APA allows EPA to stay the effective date of a final rule if it "finds that justice so requires." SunCoke requests that EPA make such a finding here. Alternatively, SunCoke requests that EPA amend the Final Rule pursuant section 553(e).⁹¹ Where, as here, there are several overarching and interrelated objections made to a rule, EPA may properly amend the Final Rule to address those concerns and rectify its procedural violations.

EPA may stay the effective date of the Final Rule, July 5, 2024, if it "finds that justice so requires." EPA and courts have applied the four-part test for preliminary injunctions to determine whether "justice so requires" a stay of agency action pending judicial review. Under that standard, the agency must consider and moving parties must demonstrate: (1) a likelihood of success on the merits of the judicial challenge, (2) irreparable harm to the moving party if the stay is not granted, (3) the potential for harm to others if the stay is granted, and (4) whether the public interest weighs in favor of granting the stay. Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. Factors (3) and (4) merge, however, when the government is the opposing party.⁹²

As explained below, each of these factors weighs in favor of staying this Final Rule until the resolution of judicial review.

⁹¹ See 5 U.S.C. § 553(e) ("Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."); *Nat'l Ass'n of Homebuilders v. EPA*, 682 F.3d 1032, 1037 (D.C. Cir. 2012) (denying petition for review of EPA's repeal of a recently amended rule because "[a]n agency's view of what is in the public interest may change, either with or without a change in circumstances.") (citation and internal quotation marks omitted).

⁹² *Nken v. Holder*, 556 U.S. 418, 435 (2009).