

the public comment period.²⁸ SunCoke commented as best it could, but simply could not address a number of critical issues in 45 days.²⁹

EPA's decision to make the Final Rule effective as of the date of publication is another example of EPA prioritizing meeting the court deadline in *Citizens for Pennsylvania's Future* over providing an adequate notice and comment period and according stakeholders important procedural rights. Under section 553(d) of the APA, agencies cannot publish a substantive rule "less than 30 days before its effective date."³⁰ Agencies can make a rule immediately effective if they meet the "good cause" exception, but that exception does not apply here. The good cause exception is "narrowly construed and only reluctantly countenanced."³¹ It is generally limited to "emergency situations, or where delay could result in serious harm."³² Its use is appropriate "in the rare circumstance when ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest."³³ In any case, EPA did not publish in the Final Rule its explanation for immediately finalizing the rule, which is another important statutory requirement.³⁴

The Final Rule contains numerous errors and omissions reflecting the agency's rush to meet the deadline imposed by the court in *Citizens for Pennsylvania's Future*.³⁵ SunCoke and other regulated entities' procedural rights to notice and an opportunity to comment were collateral damage. EPA understood that it would take time for stakeholders to evaluate the Final Rule and the underlying technical basis for the new requirements but did not have the luxury of giving SunCoke and others the time they needed to do so.

B. The new MACT floor emission limits for SunCoke's HNR facilities are not "necessary," are based on limited and/or unreliable data, and are not achievable.

1. EPA's interpretation of the LEAN decision and disparate treatment of HAP is arbitrary and capricious.

EPA's inconsistent regulation of HAP in the Final Rule is arbitrary and capricious. In the Proposed Rule, EPA stated it "is required to address regulatory gaps, such as missing MACT standards for listed air toxics known to be emitted from the source category" under *Louisiana Environmental Action Network (LEAN) v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020).³⁶ It cited *LEAN* as requiring

²⁸ The two dockets contained 2,300 documents, many of which are lengthy and complex compilations and analyses of emissions and modeling data that must be carefully reviewed for data accuracy and completeness. And many documents listed in the dockets as supporting materials were not available electronically from regulations.gov, in violation of CAA section 307(d)(3)(C). EPA cannot require the public to contact it directly to obtain missing documents and other missing information, while refusing stakeholders an extension on its 45-day timeframe.

²⁹ SunCoke comment letter, pp. 14–16.

³⁰ 5 U.S.C. § 553(d).

³¹ *Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 204 (2d Cir. 2004); *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012).

³² *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004) (internal citation omitted).

³³ *Mack Trucks*, 682 F.3d at 95.

³⁴ See *Env't Def. Fund v. EPA*, 515 F. Supp. 3d 1135, 1144 (D. Mont. 2021).

³⁵ *Citizens for Pennsylvania's Future*, 469 F. Supp. 3d 920.

³⁶ 88 Fed. Reg. at 55863.