ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ENVIRONMENTAL DEFENSE FUND, et al., *Petitioners,* v. LEE M. ZELDIN, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondents.*	No. 25-1164 (consolidated with No. 25-1168)

INDUSTRY MOVANT-INTERVENORS' JOINT RESPONSE TO PETITIONERS' MOTION FOR SUMMARY VACATUR

Movant-Intervenors American Exploration & Production Council, GPA Midstream Association, Interstate Natural Gas Association of America, American Petroleum Institute, Independent Petroleum Association of America, Arkansas Producer Associations and Royalty Owners, Eastern Kansas Oil & Gas Association, Gas and Oil Association of WV, Illinois Oil & Gas Association, Indiana Oil and Gas Association, International Association of Drilling Contractors, Kansas Independent Oil & Gas Association, Kentucky Oil and Gas Association, Michigan Oil and Gas Association, National Stripper Well Association,

North Dakota Petroleum Council, Ohio Oil and Gas Association, Pennsylvania Independent Oil & Gas Association, Petroleum Alliance of Oklahoma, Texas Alliance of Energy Producers, Texas Producer Associations & Royalty Owners Association, and Western Energy Alliance ("Industry Intervenors") oppose Petitioners' Motion for summary vacatur of the interim final rule entitled *Extension of Deadlines in Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review Final Rule*, 90 Fed. Reg. 35,966 (July 31, 2025) ("Extension Rule"). ECF #2130555 (Aug. 18, 2025) ("Motion").[1]

INTRODUCTION

To justify summary reversal of the Extension Rule, Petitioners must shoulder the heavy burden of demonstrating that the merits are so clear that full briefing and argument are unnecessary. Their Motion comes nowhere close. The Extension Rule extended eight discrete

[1] As directed by the Court's August 26, 2025 Order, ECF #2132091, Industry Intervenors submit this Joint Response to avoid duplication in responses to the Motion. Industry Intervenors conferred with movant-intervenor Domestic Energy Producers Alliance to avoid duplication.

compliance deadlines out of the hundreds set by EPA in a final rule in 2024. *See* 89 Fed. Reg. 16,820 (Mar. 8, 2024) ("the 2024 Rule"). As to each of those extensions, EPA made individualized determinations that factors such as logistical and supply chain constraints, personnel shortages, and unclear regulatory language made compliance with existing deadlines infeasible, threatened immediate widespread harm to industry, and ultimately created good cause to forego notice and comment. EPA also determined that because each extension functions independently and rests on its own record and rationale, each is severable.

Petitioners' Motion elides all of this. Instead of demonstrating that the specific findings underlying each good-cause determination are invalid, Petitioners offer only high-level, generalized attacks on the Extension Rule. But those attacks fail to justify summary vacatur for three distinct reasons. First, the question of whether this Court's precedents permit EPA's good-cause determination, given the record in this case, is an issue of first impression unfit for summary disposition. Second, EPA's good-cause determinations were well-supported and correct. And third, Petitioners' broad-brush attacks fail to establish that

each individual extension is clearly unsupported by good cause, as is necessary to justify summary vacatur of the entire Extension Rule. Accordingly, Petitioners' Motion should be denied, and the case should proceed to full briefing.

BACKGROUND

On March 8, 2024, EPA promulgated the 2024 Rule, which set forth new source performance standards for methane and volatile organic compounds (Subpart OOOOb) and emissions guidelines for methane (Subpart OOOOc) for "affected facilities" in the oil and gas industry. 89 Fed. Reg. 16,820. Subpart OOOOb applied directly to new, reconstructed, and modified facilities, with compliance dates ranging from the effective date of the 2024 Rule (*i.e.*, May 7, 2024) to one year later (*i.e.*, May 7, 2025). Subpart OOOOc established emission guidelines that the states must adopt for existing sources within their borders. That rule required the submittal of state plans for implementing the guidelines by March 9, 2026.

On July 31, 2025, EPA promulgated the Extension Rule—the subject of this Petition—to extend the compliance deadlines for just seven of the hundreds of individual compliance obligations set forth in

the 2024 Subpart OOOOb new source standards. As set forth below, as to each of those seven obligations, EPA made specific findings as to why "immediate concerns raised by stakeholders," 90 Fed. Reg. at 35,979, justify extending compliance deadlines:

1. **Monitoring net heating value for flares and enclosed combustion devices and related requirements:** "to address [] supply chain, personnel, and laboratory limitations," "to provide affected facilities sufficient lead time to retrofit sources and to plan and execute the performance tests required by the final rule," and thereby to avoid an "immediate and untenable scenario for NSPS OOOOb control devices," *id.* at 35,971–72;

2. **No identifiable emissions ("NIE") monitoring of covers and closed vent systems:** because of "serious concerns regarding the ability of owners/operators to meet the NIE inspection requirements in the 2024 rule on the existing compliance schedule," and the corresponding risk of "widespread non-compliance with the NIE requirements" given these "credible workability concerns," *id.* at 35,973;

3. **Installation of low emitting valves:** "to alleviate the compliance confusion created by the conflicting regulatory language, and to provide potentially affected sources additional time to undertake planning to obtain the needed [low emitting] equipment given the cost and widespread need for such equipment," *id.*;

4. **Process controllers:** "to address [] supply chain and logistical issues," including the additional "strain to a supply chain that currently requires 12-18 months to deliver certain types of components necessary for" implementation of the 2024 Rule's requirements, and the risk that if operators are unable to meet those requirements, they "will have to make a decision whether to continue operating, potentially in a

non-compliant state; or shut down that compressor station, thereby reducing [their] ability to move gas during peak demand periods," *id.* at 35,974;

5. **Storage vessels:** "to provide time for the potentially large number of sources that would trigger those provisions to make any needed adjustments to facility planning, equipment procurement, and process changes needed to comply with the requirements," *id.* at 35,975;

6. **Super Emitter Program:** because "EPA has experienced unanticipated difficulties and concerns that require additional time for effective and lawful administration of various program procedures," *id.* at 35,976; and

7. **Flare pilot flame and alarm requirements:** to address "significant logistical challenges" such as the need to provide supplemental fuel and difficulties related to "obtaining and installing communications equipment capable of reliably transmitting an alarm to the nearest control room," *id.* at 35,977.

At the request of several states, EPA also deferred the deadline for submission of state existing source emissions control programs under Subpart OOOOc by approximately ten months. EPA "determined that the practical reality of states identifying impacted sources and pertinent stakeholders, conducting meaningful engagement, comparing pre-existing state programs to [Subpart] OOOOc, and producing [remaining useful life and other factors] demonstrations has proven to be more time-consuming than we expected because of various challenges faced by states." *Id.* at 35,978. EPA explained that "[t]hese

challenges stem from both the relatively large and complex nature of the source category, the corresponding complexity associated with applying [Subpart] OOOOc to designated facilities, and states' lack of familiarity with the newly revised general implementing regulations." *Id.*

Based on these findings, EPA found "good cause to forego prior notice and comment because that rulemaking procedure is impracticable and unnecessary under the circumstances." *Id.* at 35,979. EPA determined notice and comment were impracticable because, given the "legitimate barriers to compliance and/or questions as to whether the regulatory provisions for which we are extending compliance deadlines are practically and logistically achievable . . . in the timeframes allowed by the [2024 Rule]," regulated parties needed "immediate relief" to "address the problems" with the applicable "untenable" compliance obligations. *Id.* at 35,980. EPA determined notice and comment were "unnecessary" because the Extension Rule made "only targeted changes to certain compliance or implementation dates in response to immediate concerns raised by stakeholders, including owners and operators subject to the rule's requirements." *Id.*

at 35,979. Nonetheless, EPA formally requested comment on the Extension Rule and stated it "will review comments received and consider whether this action should be revised, if appropriate, in response to comments received." *Id.* at 35,980.

STANDARD OF REVIEW

Summary disposition is appropriate "only where the merits are 'so clear, plenary briefing, oral argument, and the traditional collegiality of the decisional process would not affect [the Court's] decision.'" D.C. Circuit, *Handbook of Practice & Internal Procedure* 36 (Aug. 11, 2025) (quoting *Sills v. Fed. Bureau of Prisons*, 761 F.2d 792, 793–94 (D.C. Cir. 1985)). The moving party carries "the heavy burden of demonstrating that the record and the motions papers comprise a basis adequate to allow the 'fullest consideration necessary to a just determination.'" *Cascade Broad. Grp. Ltd. v. FCC*, 822 F.2d 1172, 1174 (D.C. Cir. 1987) (quoting *Sills*, 761 F.2d at 794). As a result, this Court "rarely" grants summary disposition. D.C. Circuit, *Handbook* 36.

When reviewing an agency's invocation of good cause, this Court "review[s] de novo the agency's legal conclusion that good cause exists" but "defer[s] to its factual findings unless they are arbitrary and

capricious." *Tri-Cnty. Tel. Ass'n v. FCC*, 999 F.3d 714, 719 (D.C. Cir. 2021). "Arbitrary-and-capricious review is a highly deferential standard that presumes the validity of agency action, requiring the court to determine whether the agency has considered the relevant factors and articulated a rational connection between the facts found and the choice made." *Nasdaq Stock Mkt. LLC v. SEC*, 34 F.4th 1105, 1107 (D.C. Cir. 2022) (cleaned up).

ARGUMENT

Petitioners fail to carry the "heavy burden" necessary to obtain summary vacatur for three reasons. First, Petitioners ask the Court to resolve novel, complex factual and legal questions that are inappropriate for summary disposition. Second, EPA's determinations that good cause exists were correct. And third, regardless of whether those determinations were uniformly correct, Petitioners seek summary vacatur of the entire Extension Rule without showing that every extension, each of which rests on a distinct record and rationale, is unlawful.

I. The complexity and novelty of the issues warrant full merits briefing.

The central question raised by Petitioners' Motion is whether EPA validly found "good cause" under 5 U.S.C. § 553(b)(B) based on concerns that supply chain restrictions, equipment and personnel shortages, technical limitations, unclear regulatory requirements, and other issues posed industry-wide "immediate problems related to compliance" with existing deadlines in the 2024 Rule, 90 Fed. Reg. at 35,969, 35,980, and threats to energy supplies, *see id.* at 35,974.[2] Although, as discussed *infra* at 13-26, this Court's precedents indicate that immediate harm to a national industry and its consumers, as well as regulatory confusion, do constitute good cause, this Court has not squarely addressed the precise question at issue here. On that basis alone, Petitioners' Motion fails. Because summary vacatur is appropriate only when an outcome is so "clear" that plenary briefing and argument would have no impact, this Court's handbook instructs that "[p]arties should avoid requesting summary disposition of issues of first impression for the Court." D.C.

[2] Petitioners' Motion does not raise, and thus waives, any claim that EPA's good-cause finding under 5 U.S.C. § 553(d), *see* 90 Fed. Reg. at 35,980, warrants summary vacatur.

Circuit, *Handbook* 36. This case involves such an issue, so summary disposition is inappropriate.

The cases Petitioners cite only underscore this point, as none addresses good-cause justifications like those here. For example, Petitioners repeatedly invoke *Mack Trucks, Inc. v. EPA*, 682 F.3d 87 (D.C. Cir. 2012), to challenge EPA's reasoning and to argue that precedent "squarely foreclose[s]" it. Mot. 14–17, 21. But in *Mack Trucks*, EPA's "only purpose" in promulgating a rule without public comment was "to rescue a lone manufacturer from the folly of its own choices." 682 F.3d at 93 (cleaned up). In holding that did not constitute good cause, this Court expressly distinguished that circumstance from a situation where "an entire industry and its customers were imperiled." *Id.* The present case falls squarely in the latter category, *see supra* at 4-7, which *Mack Trucks* did not address.

Petitioners also misrepresent *Union of Concerned Scientists v. Nuclear Regulatory Commission*, 711 F.2d 370 (D.C. Cir. 1983). That decision does not hold, as Petitioners suggest, that "a reluctance to place [regulated parties] in jeopardy of enforcement action is insufficient to constitute good cause." Mot. 18 (cleaned up). Rather, the

Court found such reluctance inadequate in that case because the agency, by virtue of its prosecutorial discretion, had the "power to do nothing" with respect to enforcement, and this power "demonstrate[d] conclusively that the [agency's] concern for licensees' 'jeopardy' does not rise to the level of an emergency situation falling within the scope of the 'good cause' exception." 711 F.2d at 383. That reasoning is inapplicable here because EPA does not control all enforcement under the Clean Air Act given the Act's citizen suit provision, *see* 42 U.S.C. § 7604, and concurrent delegated state enforcement authority, *see id.* § 7411(c)(1). EPA therefore cannot—as the agency in *Union of Concerned Scientists* could—shield regulated parties from enforcement. Thus, far from supporting Petitioners, *Union of Concerned Scientists* at the very least suggests that genuine concerns about widespread enforcement exposure can constitute good cause.

Finally, Petitioners' reliance on *NRDC v. NHTSA*, 894 F.3d 95 (2d Cir. 2018) is similarly misplaced. Petitioners claim that case establishes that a preference for "different regulations that are easier or less costly to comply with" does not constitute good cause. Mot. 18. But, unlike this case, *NRDC* did not involve circumstances where, without a delay of

compliance deadlines, there was a serious risk of industry-wide noncompliance and harm to consumers. Indeed, as the Second Circuit noted, the delayed provisions there "did not apply to current violations." 894 F.3d at 115. *NRDC* thus sheds no light on whether the reasons for EPA's good-cause determination here are valid.

Ultimately, Petitioners cite no case that controls the outcome here. To the contrary, the cases they cite demonstrate that assessing good cause "is inevitably fact- or context-dependent." *Mack Trucks*, 682 F.3d at 93. That nuanced analysis is precisely the sort of work the Court performs through full merits briefing and oral argument, not summary disposition.

II. EPA validly determined that good cause exists to take action without prior notice and comment.

Although the Court need go no further to deny Petitioners' Motion, the Motion also fails because EPA's good-cause determination was correct—and at the very least not "so clear[ly]" mistaken that full merits briefing and argument would "not affect [the Court's] decision." D.C. Circuit, *Handbook* 36. Under the Administrative Procedure Act, good cause exists whenever notice-and-comment procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C.

§ 553(b)(B). So long as one of these criteria applies, good cause is present. *See Campos-Chaves v. Garland*, 602 U.S. 447, 457 (2024) ("The word 'or' is almost always disjunctive, and is generally used to indicate an alternative." (cleaned up)). Here, EPA concluded that notice-and-comment procedures were impracticable and unnecessary—and justified each determination independently. 90 Fed. Reg. at 35,979–80. Contrary to Petitioners' claims, EPA's determinations were correct. Nor is there merit to Petitioners' separate argument that the Extension Rule violates the Clean Air Act's limits on stays pending reconsideration.

A. EPA correctly determined that infeasibility of existing deadlines and corresponding risks to the midstream industry—facts Petitioners do not contest—made notice and comment "impracticable."

Notice-and-comment rulemaking is "impracticable when an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required." *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 754 (D.C. Cir. 2001) (cleaned up). As noted above, the "inquiry into impracticability is inevitably fact- or context-dependent." *Mack Trucks*, 682 F.3d at 93 (cleaned up).

This Court's precedents support EPA's impracticability determinations. The Court has upheld an agency's determination that "confusion" among regulators and the risk of "economic harm and disruption" to a national industry and consumers constituted good cause for immediate regulatory action. *Am. Fed'n of Gov't Emps. v. Block*, 655 F.2d 1153, 1157 (D.C. Cir. 1981). It has also found good cause to defer implementing a mine safety requirement when the agency acted diligently but determined less than a month before the deadline that the requirement could not be feasibly met. *Council of S. Mountains, Inc. v. Donovan*, 653 F.2d 573, 582 (D.C. Cir. 1981).

Here, EPA relied on similar considerations in finding notice-and-comment procedures were impracticable in extending deadlines for seven compliance obligations (out of hundreds) in the 2024 Rule's Subpart OOOOb new source standards—deadlines that had all lapsed by the time of the Extension Rule. EPA explained that "there are legitimate barriers to compliance and/or questions as to whether the regulatory provisions for which we are extending compliance deadlines are practically and logistically achievable as promulgated in the timeframes allowed by the 2024 [Rule]." 90 Fed. Reg. at 35,980.

Specifically, for each of the seven obligations, EPA identified some combination of supply chain constraints, personnel shortages, technical challenges, regulatory confusion, and other unanticipated implementation difficulties that made compliance with the 2024 Rule's original deadlines impossible. *See id.* at 35,971-77; *supra* at 4-7. EPA expressed concern that such challenges "will inevitably yield widespread non-compliance," 90 Fed. Reg. at 35,972–73, and could force operators to shut down facilities, "thereby reducing [their] ability to move gas during peak demand," *id.* at 35,974.

As in *Block* and *Donovan*, EPA made "targeted changes" to the compliance dates for those seven obligations to avert the "immediate problems related to compliance" from such "untenable regulatory provisions." *Id.* at 35,969, 35,974. EPA also deferred states' deadline to submit existing source emissions control plans under Subpart OOOOc by approximately ten months because the required actions and determinations for producing plans for the complex oil and gas industry had "proven to be more time-consuming than we expected because of various challenges faced by states." *Id*. at 35,978. In short, the widespread adverse impacts of the current deadlines and the lack of

industry culpability for the current time crunch strongly support EPA's determination that a good-cause final rule is warranted.

Rather than engage these "fact- and context-dependent" determinations, *Mack Trucks*, 682 F.3d at 93, Petitioners instead make several general attacks on the Extension Rule. None has merit, let alone carries the "heavy burden" necessary for summary disposition. *Cascade Broad.*, 822 F.2d at 1174.

First, Petitioners assert that "[a] 'reluctance to place [oil and gas facilities] in jeopardy of enforcement action' is 'insufficient' to constitute good cause." Mot. 18. As explained *supra* at 11-12, however, the case Petitioners cite for this proposition does not actually stand for it. *Union of Concerned Scientists* did not say that the "jeopardy of enforcement action" could never constitute good cause. Rather, the Court there was unmoved by such jeopardy because the agency could simply exercise enforcement discretion to avert that danger. 711 F.2d at 383. Here, by contrast, regardless of EPA's enforcement discretion, both states (where such authority has been delegated by EPA) and private citizens (through citizen suits) can attempt to enforce the 2024 Rule. Thus,

unlike in *Union of Concerned Scientists*, agency enforcement discretion alone cannot prevent the harms the Extension Rule seeks to avoid.

Second, Petitioners assert that "[j]ust because a regulated entity might prefer different regulations that are easier or less costly to comply with does not justify dispensing with notice and comment." Mot. 18 (cleaned up). Compliance costs, however, were not a material factor in EPA's rationale for any of the affected provisions. Instead, EPA's determinations were grounded in logistical and supply chain constraints, unclear regulatory language, unanticipated problems related to EPA and state administration of the rule, and inadequate implementation time. *See* 90 Fed. Reg. at 35,971-77. As noted *supra* at 12-13, none of these considerations was present in *NRDC*, the case Petitioners cite for this argument. *See* Mot. 18.

Third, Petitioners contend that "EPA's professed concerns about compliance deadlines do not rise to the level of an emergency under this Court's precedent." *Id.* According to Petitioners, EPA cannot "claim impracticability because it had over a year to address the alleged compliance challenges it now cites as good cause." Mot. 19. But as the case Petitioners cite for this argument makes clear, this rule applies

only "when an alleged 'emergency' arises as the result of an agency's own delay." *Env't Def. Fund v. EPA*, 716 F.2d 915, 921 (D.C. Cir. 1983). Here, however, the Extension Rule makes clear that EPA was diligently evaluating concerns raised by industry, including additional new information received through more recent stakeholder discussions, during the period leading up to the Extension Rule. *See* 90 Fed. Reg. at 35,969–70. And, regardless, EPA was not merely concerned with "an alleged pressing need to avoid industry compliance" with applicable regulations. *Env't Def. Fund*, 716 F.2d at 920. Rather, it was concerned with the immediate risks to industry, and to energy markets more broadly, from widespread *non-compliance* with infeasible deadlines.

Fourth, Petitioners criticize EPA for having "primarily relie[d] on industry concerns detailed in their April-May 2024 petitions for reconsideration" and for supposedly "mak[ing] no showing that those concerns have materialized and led to serious harm." Mot. 19. But Petitioners ignore EPA's reliance on other, more recent materials as the basis for its findings, *see, e.g.*, 90 Fed. Reg. at 35,971 & n.21, and Petitioners make no showing that EPA's reliance on those materials is arbitrary and capricious.

Finally, Petitioners wrongly claim that EPA has not identified "imminent harm—much less the 'serious harm'" good cause requires. Mot. 18. As discussed, EPA found that the imposition of untenable regulatory obligations on an infeasible timeline creates "immediate problems related to compliance" industry-wide, including risks of "interim noncompliance proceedings" and harms to energy markets. 90 Fed. Reg. at 35,969, 35,974, 35,979. It is no trifling matter for EPA to impose mandatory legal obligations but provide no viable path to compliance for affected sources.

B. EPA correctly determined that notice-and-comment procedures were unnecessary.

1. Petitioners contest EPA's finding that prior notice and comment is unnecessary by arguing that "EPA itself acknowledges the vast increase in pollution and health harms the [Extension Rule] will cause." Mot. 16. That in large part provides the basis for Petitioners' assertion that "members of the public are 'greatly interested' in the [Extension Rule]." *Id*. But Petitioners fail to link the total projected increase in emissions to any particular provision of the Extension Rule, undermining their claim.

Petitioners' claim of a "vast increase" in emissions is based on the economic impact analysis EPA prepared in support of the Extension Rule. EPA, *Economic Impact Analysis for the Extension of Deadlines in the NSPS OOOOb and EG OOOOc* (July 23, 2025), https://tinyurl.com/ykadhd4d ("EIA"). Petitioners cite Table 3 on page 6 of that document, which reports an increase in emissions over the period 2028 to 2039 that is solely attributable to the ten-month deferral of the deadline for submittal of state existing source emissions control plans to EPA.

But that analysis says nothing about the potential impacts of the seven elements of the Subpart OOOOb new source standards that are addressed in the Extension Rule. According to EPA, those impacts are small or not ascertainable. In its economic analysis, EPA explains that "[t]he compliance deadline extensions for [Subpart] OOOOb apply, for the most part, to narrow provisions of the rule regarding applicability and compliance assurance for which we lack the specific data that would be needed to estimate cost and emissions impacts." EIA at 2. According to EPA, "[e]xtensions for net heating value (NHV) monitoring of flares and emissions control devices, no identifiable emissions

requirements for covers and closed vent systems, equipment leak repair requirements at natural gas processing plants, and specific provisions regarding storage vessel applicability can be characterized this way." *Id.*

EPA further explains that "[f]or the extension of the process controller requirements, we estimate that the impacts are very small (less than 1% of the size of the estimated impacts of the [Subpart] OOOOc deadline extension), so we omit them from our analysis to simplify the exposition." *Id.* EPA lastly states that "[f]inally, the impacts of the postponement of the effective date of the 'Super Emitter Program' cannot be quantified due to a lack of data, which the EPA noted in the 2024 Final Rule RIA as a limitation in assessing the impacts of the program." *Id.*

In sum, the "vast" emissions increases cited by Petitioners cannot be attributed to the seven targeted changes to deadlines in the Subpart OOOOb new source rule. Petitioners' summary suggestion that those seven provisions should be vacated due to the potential impacts of just the change to the state program submission deadline—a change that

EPA adequately supported, *see* 90 Fed. Reg. at 35,978-79—is not supported by Petitioners' arguments or by the record.

2. Petitioners finally assert that prior notice and comment was necessary because the Final Rule "reverses course on an issue of great public interest: after finalizing a peer-reviewed report that updated methodologies to monetize climate change impacts and applying those updates to the 2024 Rule, EPA suddenly changed course and determined—without any public input—that there is too much uncertainty to monetize such harms." Mot. 16-17. Petitioners assert that "[t]his precise issue was the subject of extensive notice and comment in the 2024 Rule, demonstrating its importance to the public." *Id.* at 17 (internal citation omitted).

EPA's determinations that there is "good cause" to take final action does not depend in any way on, or otherwise require consideration of, the monetized benefits of GHG emissions reductions. The statute requires EPA to consider, among other things, "the cost of achieving" emission reductions in setting standards of performance—in other words, the cost effectiveness of the emissions standards EPA formulates. 42 U.S.C. § 7411(a)(1). EPA may separately evaluate the

costs and benefits of its regulations through a regulatory impact analysis, such as the one Petitioners cite here; however, that analysis fulfills non-statutory directives under Executive Order 12866 and serves informational objectives unrelated to the CAA's standard-setting provisions. 58 Fed. Reg. 51,735 (Sep. 30, 1993). Monetized benefits from the regulatory impact analysis were not and could not have been the basis for setting the underlying standards.

In all, discussion (or lack thereof) of the monetized benefits of GHG emissions in the regulatory impact analysis, which is unrelated to the CAA's requirements and without effect on the substance of the Extension Rule, does not rise to the level of a sufficiently consequential or significant action that would make prior notice and comment necessary.

C. The Extension Rule does not violate the Clean Air Act's limitations regarding administrative reconsideration.

Finally, Petitioners assert that the Extension Rule violates 42 U.S.C. § 7607(d)(7)(B) because that provision authorizes a stay pending administrative reconsideration only under limited circumstances and only for up to three months. Mot. 21-23. According to Petitioners, the

Extension Rule is the "functional equivalent" of a stay pending reconsideration because the ongoing reconsideration proceedings are the "sole justification" for the Rule. Mot. 21. That argument fails.

Contrary to Petitioners' assertions, EPA was clear that the Rule "does not . . . address the substantive amendments requested in various petitions for reconsideration." 90 Fed. Reg. at 35,970. As described above, the deadline extensions in the Extension Rule were grounded on logistical and supply chain concerns, unclear regulatory language, unanticipated problems related to EPA and state administration of the rule, and inadequate implementation time. *See id.* at 35,971-77.

None of the precedents cited by Petitioners supports their argument. In *Clean Air Council v. Pruitt*, 862 F.3d 1 (D.C. Cir. 2017), EPA issued a stay under its reconsideration authority, § 7607(d)(7)(B), but the Court vacated the stay because petitioners failed to meet the statutory prerequisites for reconsideration. *See id.* at 9 ("the question before us is whether the industry groups that sought a stay of the methane rule met the two requirements for mandatory reconsideration"). That issue is irrelevant to the Extension Rule.

In *Air Alliance Houston v. EPA*, 906 F.3d 1049 (D.C. Cir. 2018), EPA extended compliance deadlines for the express reason of providing itself "an additional 20 months . . . *to conduct reconsideration proceedings*." *Id.* at 1060. The Court, in a decision it characterized as "narrow," ruled that § 7607(d)(7)(B) "limits EPA's authority to delay final rules *for the purposes of reconsideration* under that provision." *Id.* at 1061, 1066, 1067 (emphasis added). In that case, EPA "ma[d]e no finding that a 20-month delay is required for regulated parties over and above" existing compliance deadlines.

Here, by contrast, EPA made a set of determinations—almost completely ignored by Petitioners—that supply chain constraints and other unanticipated problems required targeted extension of certain compliance deadlines. *See* 90 Fed. Reg. at 35,971-77. Unlike in *Clean Air Council* and *Air Alliance Houston*, the purpose of the Extension Rule is not to provide EPA more time to consider petitions for administrative reconsideration. Instead, EPA in this case provided an independent justification, supported by the record, for each of the extensions, and determined pursuant to the good-cause exception that notice and comment were impracticable and unnecessary. The

Extension Rule is not the "functional equivalent" of a stay pending reconsideration.

III. Each extension is severable and must be assessed on its own merits.

Finally, Petitioners' sweeping request for summary vacatur ignores that the Extension Rule comprises targeted extensions of eight discrete deadlines, each of which is grounded upon its own record, findings, and rationale, and each of which is severable. As EPA explained, "the reasoning for each regulatory change is distinct and independent from the others." 90 Fed. Reg. at 35,969. Each amended deadline is also "functionally independent from the others—*i.e.,* may operate in practice independently of the other requirements being amended. *Id.* Given these factors, EPA reasonably determined that "[e]ach regulatory change included in [the Extension Rule] is severable from the other[s]." *Id.*; *see MD/DC/DE Broads. Ass'n v. FCC*, 236 F.3d 13, 22 (D.C. Cir. 2001) (explaining that severability "depends upon the intent of the agency and upon whether the remainder of the regulation could function sensibly without the stricken provision")

Because each individual deadline extension is severable from the others, Petitioners must show with specificity why each individual

extension is unsupported by good cause in order to justify summary vacatur of the entire Extension Rule. *Id.* But Petitioners do no such thing. For example, they make no showing that EPA erred in crediting concerns that a lack of equipment and personnel, supply chain constraints, and insufficient lab capacity necessitated an extension related to requirements for control devices. *See* 90 Fed. Reg. at 35,970–71. They fail to rebut EPA's distinct finding that compliance with the "no identifiable emissions" standard for closed vent systems is currently "not technically achievable over the long-term" and that this requirement "will inevitably yield widespread non-compliance." *Id.* at 35,972–73. They ignore that in addition to fears of widespread non-compliance, EPA was concerned that operators' inability to comply with requirements applicable to process controllers by the original deadline, due to strained supply chains, could force them to shut down compressor stations, "thereby reducing [their] ability to move gas during peak demand." *Id.* at 35,974. And so on, for each individual extension. This is sufficient reason to deny this Motion in its entirety, as Petitioners have failed to "demonstrat[e] that the record and the motions papers comprise a basis adequate to allow the 'fullest

consideration necessary to a just determination.'" *Cascade Broad.*, 822 F.2d at 1174. But even if the Court determines that particular extensions are invalid, it should vacate only those specific extensions and "leave the rest of the … rule in place." *MD/DC/DE Broads. Ass'n*, 236 F.3d at 22.

CONCLUSION

The Court should deny the Motion.

Respectfully submitted this 25th day of September 2025,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(f) and (g) of the Federal Rules of Appellate Procedure, I hereby certify that the foregoing response complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 5,190 words, excluding exempted portions, according to the count of Microsoft Word.

I further certify that this response complies with Fed. R. App. P. 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared in a proportionally spaced 14-point serif type.

Dated: September 25, 2025

Respectfully submitted,

/s/ *Makram B. Jaber*
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CERTIFICATE OF SERVICE

I certify that on this 25th day of September 2025, I am causing the foregoing response to be electronically filed with the Clerk of the Court by using the Court's CM/ECF system. All registered counsel will be served by the Court's CM/ECF system.

s/ Makram Jaber
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