

Comments of Max Lopez, Attorney at Environmental Law & Policy Center, Public Hearing on U.S. Environmental Protection Agency's 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 Interim Final Rule

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Hi my name is Max Lopez. I am an attorney at the Environmental Law and Policy Center.

ELPC works to protect the Midwest's environment from the Great Lakes to the Great Plains.

EPA has issued this Interim Final Rule in violation of the Administrative Procedure Act ("APA") and the Clean Air Act ("CAA"). EPA has claimed that the "good cause" exception provides the requisite statutory authority to issue this Interim Final Rule without first engaging in notice and comment. The good cause exception does not apply in these circumstances.

To revise a rule like the 2024 Methane Rule, the Clean Air Act ("CAA") requires the EPA to provide an opportunity for public comment and to respond to significant comments, criticism, and data before issuance of the final rule. 42 U.S.C. § 7607(d)(1)-(6), (h). The Interim Final Rule does not satisfy this requirement and the good cause exception does not provide a basis to waive this requirement.

The good cause exception allows an agency to forgo the Clean Air Act's notice and comment rulemaking procedures "when [it] for good cause finds ... that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(B). The D.C. Circuit has repeatedly narrowly construed this exception and has held it may only be "reluctantly countenanced." See *Mack Trucks v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012). Furthermore, EPA's own interpretation of the breadth of the good cause exception is irrelevant as the D.C. Circuit has also held that the Court affords no deference to an agency's assertion of good cause. See *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014).

EPA points to the "unnecessary and impracticable" language in the good cause exception for authority to issue this Interim Final Rule. Neither of these reasons apply.

To be considered "unnecessary" under the good cause exception, a rule must be "a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public." See *Mack Trucks*, 682 F.3d at 94. That is clearly not the case for this widely impactful and significant rulemaking. This Interim Final Rule delays the compliance deadlines for the core requirements in the 2024 Methane Rule. By EPA's own admission in its Economic Impact Analysis, this rule will result in oil and gas facilities emitting 3.8 million tons of methane, 960,000 tons of volatile organic compounds, and 36,000 tons of hazardous air pollution that would have otherwise been avoided between 2028 and 2038.¹ Furthermore, the EPA's claim in the Interim Final Rule that the agency is seeking to alleviate alleged impacts to industry is further evidence that the EPA itself regards the rule to be consequential. See 90 Fed. Reg. at 35,969.

¹ EPA, Economic Impact Analysis for the Extension of Deadlines in the NSPS OOOOb and EG OOOOc, at 6 tbl.3 (July 23, 2025), https://www.epa.gov/system/files/documents/2025-07/oil_and_gas_eia_extension_of_deadlines_07-2025.pdf.

Insofar as EPA is attempting to argue that this Interim Final Rule is “inconsequential to the industry and to the public” that could not be further from the truth. Industry and the public are very interested as evidenced by the nearly 1 million public comments on the 2024 Methane Rule. 89 Fed. Reg. at 16,824. The D.C. Circuit has refused to apply the good cause exception when EPA has made the same argument in the past. See [Util. Solid Waste Activities Grp. v. EPA, 236 F.3d 749, 755 \(D.C. Cir. 2001\)](#) (where the court rejected the application of the “unnecessary” prong of the good cause exception by pointing out that “members of the public were greatly interested [in the rule]”). From any perspective, whether that be tangible impacts to public health or alleged impacts to industry, this rule is very clearly consequential and has garnered massive public attention; therefore, the EPA may not utilize the unnecessary prong of the good cause exception. The attempt to do that here is in conflict with the APA and is clearly illegal.

Likewise, EPA has failed to satisfy the “impracticable” requirement of the good cause exception. For the notice and comment rulemaking procedures to be “impracticable,” the D.C. Circuit has held it must be an “emergency situation[]” or a situation “where delay could result in serious harm.” [Jifry v. FAA, 370 F.3d 1174, 1179 \(D.C. Cir. 2004\)](#).

Importantly, the D.C. Circuit has clarified that an “emergency” must be something that is an “imminent threat to the environment or safety or national security,” not something to protect a company’s “bottom line.” See [Mack Trucks, 682 F.3d at 93](#). Indeed, the Court has specifically rejected the argument put forth by EPA here, holding that “alleged pressing need to avoid industry compliance with regulations ... falls outside the scope of the good cause exception.” [Env’t Def. Fund v. EPA, 716 F.2d 915, 921 \(D.C. Cir. 1983\)](#). Furthermore, the D.C. Circuit struck down a similar delay rule despite EPA’s concern about “imposing the rule’s substantial compliance and implementation resource burden” on industry pending administrative reconsideration.” [Air All. Hou. v. EPA, 906 F.3d 1049, 1057 \(D.C. Cir. 2018\)](#).

EPA has failed to identify any imminent threat to the environment, safety or national security that would result from enforcing the original implementation timeline of the 2024 Methane Rule because there is no such threat. The most obvious representation of this is that the compliance deadlines for new sources has already passed, however the EPA has not identified any resulting harm that companies have suffered that would be alleviated by forgoing public comment.

It is clear that EPA has not shown that the narrow and stringent circumstances of the good cause exception apply in this instance. Therefore, this rule has been issued in violation of the notice and comment requirements of the APA and CAA.