Comments of the Attorneys General of California, Arizona, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, Wisconsin, and the District of Columbia, and the California Air Resources Board

on

the Environmental Protection Agency's Interim Final Rule, "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)

EPA-HQ-OAR-2025-0162

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I. INTRODUCTION

The Attorneys General of California, Arizona, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, Wisconsin, and the District of Columbia, and the California Air Resources Board (States) respectfully submit comments on the Environmental Protection Agency's (EPA) Interim Final Rule, "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) (Delay Rule).

For over a decade, many of the States have advocated for EPA's regulation of methane emissions from new and existing sources in the oil and natural gas industry under section 111 of the Clean Air Act. The oil and natural gas industry is the United States' largest industrial emitter of methane, a highly potent greenhouse gas that is responsible for one-third of the global warming attributable to greenhouse gases. In 2024, EPA took an important step towards addressing near-term warming by finalizing a rule under Section 111 entitled, "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review." 89 Fed. Reg. 16,820 (Mar. 8, 2024) (2024 Rule). The 2024 Rule updated and strengthened limits on air pollutants from new and modified sources in the oil and natural gas industry pursuant to section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b), and established nationwide emission guidelines requiring states to limit methane emissions from existing oil and gas sources pursuant to section 111(d) of the Act, *id.* § 7411(d). The 2024 Rule is projected to reduce approximately 58 million tons of methane emissions, 16 million tons of smog-producing volatile organic compounds, and 590,000 tons of air toxics from 2024 to 2038. 89 Fed. Reg. at 16,836.

The 2024 Rule was based upon considerable notice and comment over a three-year period in which stakeholders provided input on a myriad of issues including the cost, feasibility, and achievability of compliance. Now, citing the same compliance concerns raised by industry in public comments and pending administrative petitions for reconsideration, EPA has issued the Delay Rule extending industry's compliance deadline for several new source performance standards in the 2024 Rule, including the super-emitter program, leak detection and repair requirements, process controller standards, storage tank standards, compliance assurance requirements for combustion devices, flares, and closed vent systems. The Delay Rule also extends the state plan submittal deadline in the 2024 Rule's emission guidelines for existing sources. The Delay Rule took effect immediately on July 31, 2025, without public comment, because EPA illegally invoked the "good cause" exception to the Administrative Procedure Act (APA), which allows an agency to forgo notice-and-comment rulemaking procedures when it for good cause finds that such procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(B). EPA estimates that the Delay Rule (specifically the postponement of the state plan deadline) will result in oil and gas facilities emitting 1.3 million tons of methane, 350,000 tons of volatile organic compounds, and 13,000 tons of hazardous air

pollution that would have otherwise been avoided between 2028 and 2038.[1] EPA asserts that "[d]ue to the uncertainties related to monetization of impacts from changes in GHG emissions the EPA has elected to not monetize these impacts."[2] Economic Impact Analysis at 10.

We strongly support the 2024 Rule and urge EPA to continue regulation of methane emissions from new and existing sources from the oil and gas industry to mitigate climate destabilizing pollution and protect public health and welfare and the environment. To that end, we have identified several procedural and legal flaws with the Delay Rule. First, EPA's invocation of the "good cause" exception to forgo the Clean Air Act's rigorous rulemaking procedures does not apply here. The "unnecessary" prong of the good cause exception is "confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public." *Mack Trucks v. EPA*, 682 F.3d 87, 94 (D.C. Cir. 2012). EPA acknowledges that the interim final rule will result in more pollution and harm to public health. *See* 90 Fed. Reg. at 35,969. Thus, the interim final rule, by EPA's own admission, is "far from inconsequential." Further, EPA's concerns about compliance deadlines do not rise to the level of an emergency warranting the good cause exception. *See Env't Def. Fund v. EPA*, 716 F.2d 915, 921 (D. C. Cir. 1983) ("[A]lleged pressing need to avoid industry compliance with regulations … falls outside the scope of the good cause exception.").

Second, the Delay Rule is unlawful under the Clean Air Act because it is clearly responding to administrative petitions for reconsideration for the 2024 Rule and thus is the "functional equivalent of a stay" pending reconsideration under Clean Air Act section 307(d)(B)(7). All the issues addressed by the Delay Rule were raised and extensively deliberated during the comment period on the 2024 Rule, so EPA cannot meet the threshold requirements of a stay under that narrow statutory provision. Finally, the Delay Rule is arbitrary and capricious for failing to adequately explain its departure from previous conclusions that the 2024 Rule's deadlines for new oil and gas sources provided ample time for industry compliance, failing to consider the impact of EPA's deregulatory agenda on state plan submittals, and failing to consider the cost of greenhouse gas emissions.

Accordingly, the States respectfully request that EPA revise the Delay Rule in response to comments received and issue a final rule that maintains the compliance deadlines for new oil and gas sources that were originally set forth in the 2024 Rule. We also request that EPA continue to provide a strong national foundation to reduce methane emissions from existing oil and gas sources by supporting our state planning processes to the fullest extent possible without any more delays.

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[1] EPA, Economic Impact Analysis for the Extension of Deadlines in the NSPS OOOOb and EG OOOOc (July 23, 2024) [hereinafter 2024 EIA] at 6, tbl. 3.

[2] *Id*. at 10.

II. FACTUAL BACKGROUND

A. Climate Change and Associated Harms to States

As detailed in recently submitted comments opposing EPA's Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36,288 (Aug. 1, 2025), our States are experiencing significant harms caused by climate change.[3] The effects of climate change are apparent in every region of the United States.[4] An enormous body of scientific research affirms that human activity, primarily burning fossil fuels, is exacerbating climate change, harming public health and welfare as well as the environment. Summer 2024 was the hottest summer recorded in the Northern Hemisphere—breaking the previous record set in 2023.[5] Extreme summer heat driven by climate change is leading to increased rates of heat-related illness and death, particularly among populations vulnerable to high heat, including children, the elderly, low-income individuals, and workers.[6] Wildfires, which are fueled by hotter, drier conditions, are becoming one of the deadliest and most costly environmental threats in the country. A newly published analysis found that particulate pollution ($PM_{2.5}$) from wildfires caused approximately 15,000 premature deaths in the United States from 2006 to 2020, disproportionately impacting communities in the West and Midwest.[7] The study also found that the cumulative economic burden of climate change-related wildfire $PM_{2.5}$ mortality was $160 billion.[8] And a recent analysis of wildfire smoke mortality in the United States projects that climate-driven increases in smoke PM2.5, even under a high-greenhouse gas mitigation and low global warming scenario, will cause 8,000 additional annual excess deaths in the United States in the 2050s than occurred during the last decade, and 690,000–720,000 cumulative excess deaths over the 2025–2055 period across low to high global warming levels.[9]

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[3] *See* Comments of the Attorneys General of Massachusetts, et al., on the Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36,288 (Aug. 1, 2025), EPA-HQ-OAR-2025-0194.

[4] ALLISON R. CRIMMINS ET AL., U.S. GLOB. CHANGE RSCH. PROGRAM, FIFTH NATIONAL CLIMATE ASSESSMENT, Ch. 1, at 1-6 – 1-7, fig. 1.1 (2023) [hereinafter NCA5] , https://repository.library.noaa.gov/view/noaa/61592/noaa_61592_DS1.pdf

[5] Sally Younger, *NASA Finds Summer 2024 Hottest to Date*, NASA (Sept. 11, 2024), https://perma.cc/V4UK-MZNP; *Earth Had Its Hottest August in 175-Year Record*, NOAA (Sept. 12, 2024), https://perma.cc/A7RW-A6FP.

[6] Marina Romanello et al., *The 2024 Report of the Lancet Countdown on Health and Climate Change: Facing Record-Breaking Threats from Delayed Action*, 404 THE LANCET 1847–96 (2024), https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(24)01822-1/abstract https://perma.cc/R544-MTT5.

[7] Beverly E. Law et al., *Anthropogenic Climate Change Contributes to Wildfire Particulate Matter and Related Mortality in the United States*, 6 COMMS. EARTH & ENV'T 1-3 (2025), https://perma.cc/QVF5-SQ7S.

[8] *Id*.

[9] Minghao Qiu et al., *Wildfire Smoke Exposure and Mortality Burden in the US Under Climate Change*, NATURE (2025), https://perma.cc/GEK9-694Q.

These changes and harms have had devastating effects on our States and our residents. A few examples of these harms are provided below:

- In January 2025, California experienced two of the most destructive fires in state history, the Palisades Fire and the Eaton Fire, both in Los Angeles County, with over 37,469 acres damaged, 30 deaths, multiple first responders injured, and over 16,251 structures destroyed.[10] More than 200,000 residents received evacuation notices and warnings[11] as Los Angeles County—with a population approaching 10 million people—was "encircled by fire,"[12] in a "monster inferno."[13] The fires were exacerbated by wet winters in the prior two years that increased vegetation growth, exceptionally dry conditions during the fall, and strong Santa Ana wind gusts approaching 100 miles per hour. [14] The fires have left behind a "toxic soup" of carcinogens in surrounding soil and air.[15] The capital losses and property damage alone are estimated to be "between $76 billion and $131 billion."[16]

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[10] *Palisades Fire*, Cal. Dep't of Forestry & Fire Prot., https://www.fire.ca.gov/incidents/2025/1/7/palisades-fire (last updated May 20, 2025, 11:56 AM); *Eaton Fire*, Cal. Dep't of Forestry & Fire Prot., https://www.fire.ca.gov/incidents/2025/1/7/eaton-fire (last updated May 20, 2025, 11:57 AM).

[11] *See Landsat 9 Image of the Greater Los Angeles Fires - January 14, 2025 (During)*, U.S. Geological Surv. (Jan. 14, 2025), https://www.usgs.gov/media/images/landsat-9-image-greater-los-angeles-fires-january-14-2025-during.

[12] Carol Mimbs Nyce, *Waking Up to Fire in Los Angeles*, New Yorker: The Daily (Jan. 8, 2025), https://www.newyorker.com/newsletter/the-daily/waking-up-to-los-angeles-on-fire?_sp=6a9f4a18-30fc-468d-8728-a04c0cb6b758.1744655221942.

[13] Jude Sheerin & John Sudworth, *LA Firefighters Battle to Contain Monster Inferno as Death Toll Rises*, BBC News (Jan. 11, 2025), https://www.bbc.com/news/articles/c897l7wyzj5o.

[14] *See Drought Status Update for California-Nevada*, NOAA: Nat'l Integrated Drought Info. Sys. (Jan. 16, 2025), https://www.drought.gov/drought-status-updates/drought-status-update-california-nevada-2025-01-16; Rebecca Lindsey, *The Weather and Climate Influences on the January 2025 Fires Around Los Angeles*, NOAA Climate.gov (Feb. 19, 2025), https://www.climate.gov/news-features/event-tracker/weather-and-climate-influences-january-2025-fires-around-los-angeles; Haroula D. Baliaka et al., *Notes from the Field: Elevated Atmospheric Lead Levels During the Los Angeles Urban Fires—California, January 2025*, 74 (5) CDC Morbidity & Mortality Wkly. Rep. 69, 69 (Feb. 20, 2025), https://www.cdc.gov/mmwr/volumes/74/wr/mm7405a4.htm?s_cid=mm7405a4_w.

[15] Brendan Borrell, *After Wildfires, L.A.'s Clear Skies Conceal a 'Toxic Soup'*, N.Y. Times (Mar. 12, 2025, updated Mar. 24, 2025), https://www.nytimes.com/2025/03/12/well/los-angeles-fires-health.html.

[16] Zhiyun Li & William Yu, *Economic Impact of the Los Angeles Wildfires*, UCLA Anderson Sch. of Mgmt. (Mar. 3, 2025), https://www.anderson.ucla.edu/about/centers/ucla-anderson-forecast/economic-impact-los-angeles-wildfires.

- In late September 2024, Hurricane Helene brought torrential rain to Western North Carolina, exceeding previous records for rainfall in the region and causing catastrophic and unprecedented damage.[17] North Carolina experienced over 30 inches of rainfall in some locations, and more than a thousand landslides.[18] As of June 17, 2025, there were 108 verified deaths in North Carolina due to Helene.[19] NOAA's National Centers for Environmental Information estimates that Helene has caused $78.7 billion in damage.[20] *See* App. 1 at 85–86.

- In the Pacific Northwest, a 2021 heatwave "shattered" temperature records, with "all-time highs of . . . 108°F (42°C) in Seattle, Washington."[21] The temperature hit 115°F in Portland, Oregon, where during that time of year the typical temperature is 73°F.[22] These soaring temperatures ruined crops and caused roads to buckle.[23] "The heatwave led to more than 1,400 heat-related deaths, another severe wildfire season, mass die-offs of fishery species important to the region's economy and Indigenous communities, and total damages exceeding $38.5 billion."[24]

- Since 2000, the Southwest has experienced a "megadrought"—defined as "an episode of intense aridity that persists for multiple decades"—that is recognized as the driest two decades in 1,200 years.[25] This drought has "drastically shrunk the Colorado River, which provides water for drinking and irrigation" for over 40 million people in seven states, 30 tribes, and Mexico.[26] *See* App. 1 at 27, 77.

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[17] ANDREW B. HAGEN ET AL., NATIONAL HURRICANE CENTER TROPICAL CYCLONE REPORT: HURRICANE HELENE (AL092024) 24-27 SEPTEMBER 2024 at 1, 14–17, 22–26 (Apr. 8, 2025), https://www.nhc.noaa.gov/data/tcr/AL092024_Helene.pdf.

[18] *Id*. at 14, 22–24.

[19] N.C. Dep't of Health & Human Servs., *Hurricane Helene Storm Related Fatalities*, https://www.ncdhhs.gov/assistance/hurricane-helene-recovery-resources/hurricane-helene-storm-related-fatalities.

[20] Hagen et al., *supra* note 17, at 19.

[21] Emily Bercos-Hickey et al., *Anthropogenic Contributions to the 2021 Pacific Northwest Heatwave*, 49 GEOPHYSICAL RSCH. LETTERS 1 (2022), https://perma.cc/C5Z3-6ZXV.

[22] Neil Vigdor, *Pacific Northwest Heat Wave Shatters Temperature Records*, N.Y. Times (June 30, 2021), https://perma.cc/5JXR-XEQZ.

[23] Bercos-Hickey et al., *Anthropogenic Contributions*, *supra* note 18, at 1.

[24] NCA5, *supra* note 4, at 1-19.

[25] A. Park Williams et al., *Rapid Intensification of the Emerging Southwestern North American Megadrought in 2020–2021*, 12 NATURE CLIMATE CHANGE 232–34 (2022).

[26] Jennifer Weeks, *The Colorado River Drought Crisis: 5 Essential Reads,* THE CONVERSATION (Apr. 13, 2023, 8:26 AM ET), https://perma.cc/6WKK-Q4ZG; *"Mega-drought" Takes Dramatic Toll on Colorado River System that Provides Water to 40 Million People*, CBS

- Since the 2010s, when Tropical Storm Lee, Hurricane Irene, and Hurricane Sandy, collectively killed over 50 people and caused billions of dollars in damage, New York has continued to experience an increase in the intensity, duration, and frequency of hurricanes and tropical storm events. Tropical Storm Henri and Hurricane Ida occurred within two weeks of each other in 2021. Tropical Storm Henri broke several meteorological records in New York City, including the biggest two-day rainfall event since Hurricane Irene with 7.04 inches total.[27] Eight days later, Hurricane Ida shattered many of these records. Some parts of the City experienced 3.15 inches of rainfall in one hour, and the National Weather Service issued the first ever flash flood emergency for New York City.[28] In total, Hurricane Ida caused 17 deaths in New York and 7.5 billion dollars' worth of damage, including flood damage to 11,000 homes.[29] *See* App. 1 at 82–83, 120.

- States across the United States have experienced an average of 18 percent decline in snowpack between 1950 and 2023, with especially pronounced declines in Washington, Oregon, and Northern California.[30] Not only does reduced snowpack impact tourism and winter sport economies, but it also alters the volume and timing of streamflow that affects hydropower, irrigation, and availability of drinking water while increasing the risk of wildfires at the same time.[31]

- Ocean acidification threatens coral and marine ecosystems throughout the coastal waters of the United States, with global oceans already experiencing an 18% increase in acidity between 1982 and 2022.[32] This acidification endangers the survival of the crab, lobster and scallop industries, whose fisheries total around $1.5 billion each year.[33] These

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NEWS (June 9, 2021, 7:05 AM ET), https://perma.cc/4MS4-9LUF; Nat'l Integrated Drought Info. Sys., NOAA, *National Conditions: Colorado* https://perma.cc/L9UX-QDE7.

[27] Andy Newman & Ellen Barry, *Tropical Storm Henri Brings Power Outages and Record Rain to Northeast*, N.Y. TIMES (Oct. 28, 2021), https://perma.cc/Z7FX-U76J.

[28] Jesus Jiménez, *New York City Faces the First 'Flash Flood Emergency' in Its History*, N.Y. TIMES (Nov. 12, 2021), https://perma.cc/TAC5-4YH2.

[29] Press Release, Kathy Hochul, N.Y. State Governor, Governor Hochul Announces Hurricane Ida Recovery Action Plan to Assist New Yorkers Impacted by Deadly Storm (Aug. 29, 2022), https://perma.cc/RA44-F78J.

[30] EPA, *Climate Change Indicators: Snowpack* (June 2024), https://perma.cc/6WP9-CRMG; *see also* Alexander R. Gottlieb & Justin S. Mankin, *Evidence of human influence on Northern Hemisphere snow loss*, 625 NATURE 293–300 (Jan. 10, 2024), https://perma.cc/6EDP-ZYZK.

[31] *Id*.; *see also* NCA5, *supra* note 4, at 1–23.

[32] INTERAGENCY WORKING GRP. ON OCEAN ACIDIFICATION, THE UNITED STATES OCEAN ACIDIFICATION ACTION PLAN 2 (Dec. 2023), https://perma.cc/Q4LM-XR38.

[33] *Id*. at 5.

impacts would particularly harm coastal and Indigenous communities who rely on these resources for their livelihoods and for their cultural significance.[34]

No region of the United States will be spared from these harms. But such harms will be especially pronounced in communities with environmental justice concerns and other vulnerable populations. These communities already bear the disproportionate burden of environmental harms and adverse health outcomes stemming from the longstanding cumulative impacts of multiple polluting sources[35] and exacerbated by climate change attributed to greenhouse gas emissions from stationary and other sources.[36] For example, as climate change continues to increase the frequency and severity of extreme temperature events,[37] EPA has projected an increase in heat-related mortality in communities with environmental justice concerns[38] and further degradation of air quality in historically redlined neighborhoods, leading to heat-related deaths, asthma diagnoses, and lost work.[39] Such events are also projected to cause labor disruptions in sectors such as agriculture and construction where people work outdoors or in indoor environments without air conditioning, leading to lost wages for already low-income

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[34] *Id*.

[35] EPA, INTERIM FRAMEWORK FOR ADVANCING CONSIDERATION OF CUMULATIVE IMPACTS 4 (Nov. 2024), https://perma.cc/JP4K-CGE9 ("Environmental public health research has shown that the cumulative impacts of longstanding place-based inequalities in exposures to environmental hazards are significant, with health disparities linked to these inequalities") (citations omitted); *see also* Rachel Morello-Frosch et al., *Understanding the Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy*, 30 HEALTH AFF. 879 (2011); COUNCIL ON ENV'T QUALITY, THE SECOND ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 191-96 (Aug. 1971), https://perma.cc/JT6V-5Y3F

[36] Alique G. Berberian, David J. X. Gonzalez & Lara J. Cushing, *Racial Disparities in Climate Change-Related Health Effects in the United States*, 9 CURRENT ENV'T HEALTH REP. 451, 451–52 (2022), https://perma.cc/4BUF-7RMP; H. Orru, K. L. Ebi & B. Forsberg, *The Interplay of Climate Change and Air Pollution on Health*, 4 CURRENT ENV'T HEALTH REP. 504, 504 (2017), https://perma.cc/GY2P-M4DW; *see also* NCA5, *supra* note 4 at Ch. 14: Air Quality.

[37] INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC), CLIMATE CHANGE: 2023 SYNTHESIS REPORT 12, 14 (2023) [hereinafter 2023 IPCC SYNTHESIS REPORT], https://perma.cc/PUK3-W57E; IPCC, CLIMATE CHANGE 2022: IMPACTS, ADAPTATION AND VULNERABILITY 9, 13 (2022), https://perma.cc/QP68-4N5Z.

[38] EPA, CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES: A FOCUS ON SIX IMPACTS 35 (Sept. 2021) [hereinafter CLIMATE CHANGE AND SOCIAL VULNERABILITY], https://perma.cc/PJS8-WPZG ("In the cities analyzed, minorities and those with low income are more likely…to currently live in areas with the highest projected increases in temperature mortality from climate-driven changes in extreme temperatures.").

[39] *See* CLIMATE CHANGE AND SOCIAL VULNERABILITY, *supra* note 38 at 8; Jeremy Hoffman, Vivek Shandas & Nicholas Pendleton, *The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas*, 8 CLIMATE 1 (2020), https://perma.cc/K7UW-ZDPH.

populations and forcing workers to choose between losing essential pay and working in unsafe conditions.[40] Those same workers and their families are less likely to have access to quality healthcare, rendering them even more vulnerable to health risks from heat exposure.[41]

Climate change will also continue to cause an increase in the frequency and severity of extreme weather events and natural disasters in every region of the United States, causing deaths, displacement, and economic upheaval.[42] Communities with environmental justice concerns—such as communities of color and low-income communities—are disproportionately vulnerable to such events,[43] and they are less equipped to recover.[44] Climate change also will lead to an increased threat from infectious diseases,[45] and threaten food and water safety and security for Indigenous populations, many of which rely "on the environment for sustenance or [] live in geographically isolated or impoverished communities" and so will "experience greater exposure and lower resilience to climate related health effects."[46] The impacts of climate change are particularly stark for people with disabilities, who face disproportionate health risks,[47] are often

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[40] *See* CLIMATE CHANGE AND SOCIAL VULNERABILITY, *supra* note 38, at 38.

[41] *Id*.

[42] 2023 IPCC Synthesis Report, *supra* note 37, at 5–11.

[43] JANET L. GAMBLE ET AL., U.S. GLOB. CHANGE RSCH. PROGRAM, THE IMPACTS OF CLIMATE CHANGE ON HUMAN HEALTH IN THE UNITED STATES: A SCIENTIFIC ASSESSMENT, CH. 9: POPULATIONS OF CONCERN, 248, 253 (2016) https://perma.cc/3E2S-ZRFA ("Given the relatively higher rates of cardiovascular and respiratory diseases in low-income urban populations, these populations are more sensitive to degraded air quality, resulting in increases in illness, hospitalization, and premature death. In addition, climate change can contribute to increases in aeroallergens, which exacerbate asthma, an illness that is relatively more common among some communities of color and low-income groups." (citations omitted)).

[44] *See* NCA5, *supra* note 4 at Ch. 31, 11–14; Patrick Boyle, *Rural Americans Find Little Escape from Climate Change*, ASS'N OF AM. MED. COLLS. (July 13, 2023), https://perma.cc/H9KC-SFVN; *see also* Gamble et al., *supra* note 43 at 249–50 ("For example, people with limited economic resources living in areas with deteriorating infrastructure are more likely to experience disproportionate impacts and are less able to recover following extreme events, increasing their vulnerability to climate-related health effects[.]").

[45] 2023 IPCC SYNTHESIS REPORT, *supra* note 37, at 6–7, 15; Gamble et al., *supra* note 43, at 253 (describing the impacts of climate change on vector-borne diseases and water-related illness).

[46] Gamble et al., *supra* note 43, at 253.

[47] Nakyung Rhim et al., *Adverse Health Effects of Climate Change and Air Pollution in People with Disabilities: A Systematic Review*, 46 EPIDEMIOLOGY & HEALTH 1 (2024), https://perma.cc/3PMN-CAV5.

not fully considered in disaster planning, and are far more likely to be displaced by extreme weather events.[48]

Our States have faced myriad impacts from climate change in recent years. The increasing frequency, size, and intensity of such events have been conclusively tied to a warming planet, which is widening environmental, health, and economic disparities for disadvantaged communities in our States and nationwide.[49] These harmful effects will only increase, along with associated disparities, in the absence of drastic emission reductions.

B. Methane Emissions from the Oil and Natural Gas Industry

Methane is a highly potent greenhouse gas that is "83 times more powerful" at trapping climate-warming heat than carbon dioxide over a 20-year timeframe. 89 Fed. Reg. 16,820, 16,843. Methane is the second leading climate-forcing agent after carbon dioxide globally and human-caused methane emissions have resulted in "one-third of the [global] warming" attributable to greenhouse gases. *Id*. at 17,025. Methane is also the main component of natural gas. Indeed, the oil and natural gas industry is the United States' largest industrial emitter of methane with most of the methane emissions resulting from unintentional leaks or intentional releases as natural gas moves through the production, processing, transmission, and distribution system. *See id*. at 16,843. Because methane is such a powerful greenhouse gas and "is emitted in large quantities," reducing methane emissions from the oil and natural gas industry is an important step in addressing near-term warming that is already affecting our residents. *Id*. For this reason, many of the States have long called for the federal government to regulate methane emissions from new and existing sources in the oil and natural gas sector under section 111 of the Clean Air Act.[50]

C. Non-GHG Emissions from the Oil and Gas Industry

The oil and natural gas industry is also a source of significant emissions of volatile organic compounds (VOCs) and air toxics. The public health impacts of VOCs are well

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[48] Ash Reynolds, *Disability Amid Disaster: People with Disabilities Are Disproportionately Impacted by Natural Disasters*, NBC NEWS (Feb. 23, 2025, 3:10 PM ET), https://perma.cc/W8WM-SQ8F.

[49] David Herring, *What is an "Extreme Event"?*, CLIMATE.GOV (Oct 29, 2020) https://perma.cc/2Z46-BNN7.

[50] *See, e.g*., Letter from Eric T. Schneiderman, et al., to Gina McCarthy, "Re: Comments on EPA Methane White Papers" (June 16, 2014) (signed by attorneys general of Delaware, Maryland, Massachusetts, New York, Oregon, Rhode Island, and Vermont); Letter from Eric Schneiderman, et al., to Janet McCabe, "Re: Addressing Methane Emissions from Distribution Sector" (Sept. 12, 2014) (signed by attorneys General of Delaware, Maryland, Massachusetts, New York, Oregon, Rhode Island, and Vermont; Letter from Attorneys General of New York, Massachusetts, Oregon, Rhode Island, and Vermont to United States Environmental Protection Agency, Docket ID No. EPA-HQ-OAR-2010-0505 (Dec. 4, 2015).

documented. VOCs are a main precursor to the formation of ground-level ozone.[51] Exposure to elevated levels of ozone can cause coughing, throat irritation, lung tissue damage, and aggravation of existing conditions, such as asthma, bronchitis, heart disease, and emphysema. 80 Fed. Reg. 65,292, 65,302–11 (Oct. 26, 2015); 89 Fed. Reg. at 16,841. Long-term exposure to VOCs can also result in premature death from lung and heart disease. 89 Fed. Reg. at 16,841. Children and people with respiratory disease are most at risk. *Id.* VOCs also contribute to nonattainment of national ambient air quality standards for ozone thereby impeding our States' ability to meet our NAAQS attainment obligations under section 110 of the Clean Air Act. The oil and gas industry is also a source of air toxics such as formaldehyde and benzene, which are known to cause cancer and other adverse health effects. *Id*.

III. REGULATION OF METHANE EMISSIONS FROM THE OIL AND GAS SECTOR UNDER SECTION 111 OF THE CLEAN AIR ACT

Section 111 of the Clean Air Act (the Act), 42 U.S.C. § 7411, directs EPA to limit emissions of air pollutants from categories of "stationary sources" (i.e., non-mobile) when such emissions cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. For each source category, EPA must prescribe federal "standards of performance" for new, modified, and reconstructed sources. *Id.* at § 7411(b)(1)(B). Once EPA has set standards for new sources, it must establish emission guidelines for existing sources (those built or modified before a proposed standard has been issued). 42 U.S.C. § 7411(d); 40 C.F.R. § 60.22a(a). EPA's emission guidelines do not directly regulate existing sources, but guide states in preparing plans for achieving the specified emissions reductions. *See* 42 U.S.C. § 7411(d)(1). If a state fails to submit a satisfactory plan, the agency must directly regulate existing sources in the state's stead. 42 U.S.C. § 7411(d)(2).

A. Regulatory History for the Oil and Gas Source Category

In 1979, EPA listed the oil and gas source category under Section 111, 44 Fed. Reg. 49,222 (Aug. 21, 1979), and promulgated its first new source standards for VOCs in 1985, 50 Fed. Reg. 26,122 (June 24, 1985). In 2016, EPA issued new source standards for methane emissions from the oil and gas category. 81 Fed. Reg. 35,824 (June 3, 2016). In 2020, EPA promulgated two final rules to roll back portions of the 2016 rule: the 2020 "policy" rule, which deregulated transmission and storage activities and eliminated methane regulation at all other new oil-and-gas-facility sources, 85 Fed. Reg. 57,018 (Sept. 14, 2020); and the 2020 "technical" rule, which revised the remaining VOC regulations, 85 Fed. Reg. 57,398 (Sept. 15, 2020). In 2021, consistent with the Congressional Review Act, 5 U.S.C. §§ 801 et seq., Congress disapproved and nullified the 2020 policy rule. Pub. L. No. 117-23, 135 Stat. 295; see 5 U.S.C. § 801(b)(1). As a result, EPA is barred from adopting any future rule that is "substantially the same." 5 U.S.C. § 801(b)(2).

[51] Methane, like VOCs, is also an ozone precursor. *See* 89 Fed. Reg. 16,820, 16,840–41 (Mar. 8, 2024).

B. The 2024 Rule

On March 8, 2024, EPA promulgated a rule (1) strengthening the oil and gas sector's new source standards for methane and VOCs, and (2) establishing emission guidelines for state standards governing methane emissions from existing oil and gas facilities. 89 Fed. Reg. 16,820. A summary of the 2024 Rule's provisions are as follows:

- *New oil and gas facilities*. The 2024 Rule: (1) requires all new oil and gas well sites, centralized production facilities, and compressor stations to be routinely monitored for leaks; (2) phases out routine flaring of natural gas from new oil wells; (3) provides a one-year phase-in for zero-emissions from new process controllers and pumps; (4) requires new storage tanks to reduce emissions by 95 percent; (5) sets emission standards for dry seal compressors; (6) and allows owners and operators flexibility to utilize a variety of advanced monitoring technologies to conduct monitoring at applicable sites. The compliance deadline for most new sources was May 7, 2024.

- *Existing oil and gas facilities*. The 2024 Rule includes emission guidelines for states to follow as they develop plans that establish, implement, and enforce performance standards for methane emissions from existing sources. The emission guidelines include "presumptive standards" for existing sources that largely mirror the standards for new sources. States must develop and submit their plans by March 9, 2026, and each state plan must provide for compliance by regulated facilities by March 9, 2029. 89 Fed. Reg. at 17,218.

- *Super-emitter program*. The 2024 Rule creates a "super-emitter program" that leverages third-party expertise to find large leaks and releases. Recent studies have shown that emissions from a small number of sources are responsible for as much as half of the methane emissions from oil and natural gas operations. Under the super-emitter program, EPA evaluates data provided by certified third parties and notifies owners and operators of regulated facilities when a super-emitting event (defined as emissions of 100 kilograms of methane per hour or larger) is detected. Owners and operators are then required to conduct an analysis to determine the cause of the event and take any necessary corrective action. EPA must make the super-emitter data publicly available.

EPA estimates that between 2024 and 2038, the 2024 Rule will reduce methane emissions by 58 million tons, VOC emissions by 16 million tons, and hazardous air pollutant emissions by 590 thousand tons. *Id*. at 16,836.

C. The Delay Rule

In January 2025, President Trump signed Executive Order 14154, "Unleashing American Energy," directing agencies to identify those agency actions that "impose an undue burden on the identification, development, or use of domestic energy resources." Shortly thereafter, EPA announced its intention to reconsider the 2024 Rule and to address "short-term compliance concerns."[52] In March 2025, EPA announced that it would reconsider the 2024 Rule as part of its

[52] *See* EPA, Oil and Gas Regulations: Powering the Great American Comeback Fact

"Biggest Deregulatory Action in U.S. History."[53]

On July 31, 2025, EPA published the Delay Rule, an interim final rule delaying industry's compliance deadlines for several new source performance standards in the 2024 Rule, including the super-emitter program, leak detection and repair requirements, process controller standards, storage tank standards, compliance assurance requirements for combustion devices, flares, and closed vent systems. As stated, the compliance deadline for these standards was over a year ago, May 7, 2024. Nevertheless, EPA has extended the deadline to January 22, 2027. *Id*. at 35,970-79. The Delay Rule also postpones the state plan deadline from March 9, 2026, to January 22, 2027. *Id*. at 35,977. EPA estimates that the Delay Rule (specifically the postponement of the state plan deadline) will result in oil and gas facilities emitting 1.3 million tons of methane, 350,000 tons of volatile organic compounds, and 13,000 tons of hazardous air pollution that would have otherwise been avoided between 2028 and 2038. 2024 EIA at 6, tbl. 3.

IV. THE GOOD CAUSE EXCEPTION DOES NOT APPLY

EPA expressly (but mistakenly, *see infra* Section V.) relies on Section 111 of the Act to issue the Delay Rule. Reliance on Section 111 would trigger the application of special rulemaking procedures pursuant to the "procedural requirements of CAA section 307(d)." 90 Fed. Reg. at 35,979. This includes rigorous notice and comment procedures. Specifically, Section 307(d) mandates that EPA issue a proposed rule and include in the proposal: (A) the factual data on which the proposed rule is based; (B) the methodology used in obtaining the data and in analyzing the data; and (C) the major legal interpretations and policy considerations underlying the proposed rule. 42 U.S.C. § 7607(d)(3); *see also Schiller v. Tower Semiconductor, Ltd*., 449 F.3d 286, 300 n.14 (2d Cir. 2006) (explaining that in Section 307(d), Congress provided notice and comment procedures that go beyond what is required under the APA). "These requirements apply with the same force when an agency seeks to delay or repeal a previously promulgated final rule." *NRDC v. NHTSA*, 894 F.3d 95, 113 (2d Cir. 2018); see *Clean Air Council v. EPA*, 862 F.3d 1, 9 (2017).

Citing logistical and economic challenges raised by stakeholders, EPA has invoked the "good cause" exception to the APA for the Delay Rule, which allows an agency to forgo the 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); *see also* 42 U.S.C. § 7607(d)(1). Likewise, EPA has determined that the Delay Rule may take effect immediately upon publication (rather than 30 days after publication

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Sheet, https://www.epa.gov/system/files/documents/2025-03/oil-and-gas-regulations_powering-the-great-american-comeback_fact-sheet_2.pdf.

[53] EPA, EPA Launches Biggest Deregulatory Action in U.S. History (March 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history; EPA, Trump EPA Announces OOOO b/c Reconsideration of Biden-Harris Rules Strangling American Energy Producers (March 12, 2025), https://www.epa.gov/newsreleases/trump-epa-announces-oooo-bc-reconsideration-biden-harris-rules-strangling-american.

as required by the APA) because it "relieves a restriction" and "good cause" exists. 90 Fed. Reg. at 35,980.

But the good cause exception "should be narrowly construed and only reluctantly countenanced." *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012) (quotation marks omitted). The justifications for the exception "are not 'escape clauses' that may be arbitrarily utilized at the agency's whim." *American Federation of Government Employees, AFL-CIO v. Block*, 655 F.2d 1153, 1156 (D.C. Cir.1981). Courts "have typically applied the good cause exception to 'excuse[ ] notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'" *Am. Pub. Gas Ass'n v. United States Dep't of Energy*, 72 F.4th 1324, 1339–40 (D.C. Cir. 2023). None of the grounds advanced by EPA support the use of the APA's "good cause" exception here.

A. The "unnecessary" justification is inapplicable to the Delay Rule

EPA contends that pre-promulgation public comment is unnecessary for the Delay Rule because the agency is making "targeted deadline revisions" that do not "unreasonably frustrate" the ultimate emission reductions of the 2024 Rule. 90 Fed. Reg. at 35,979. Notice and comment may be "unnecessary" where minor or merely technical amendments are involved and "the public is not particularly interested." *National Nutritional Foods Ass'n. v. Kennedy*, 572 F.2d 377 (2d Cir. 1978). A good cause exception on this basis should be "confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public." *Mack Trucks, Inc*., 682 F.3d at 94 (quotation marks omitted).

Here, the Delay Rule does not make "targeted changes" as EPA asserts but instead makes changes to substantive requirements of the 2024 Rule such as extending important compliance deadlines for new source performance standards and emission guidelines that will result in significant environmental and public health and welfare impacts. The Delay Rule lies in stark contrast to an earlier interim final rule issued by EPA to amend the 2024 Rule that also relied on the "unnecessary" justification to forgo notice and comment. *See Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review: Correction*, 89 Fed. Reg. 62,872 (Aug. 1, 2024) ("Correction Rule"). The Correction Rule addressed technical corrections such as adding "and" and replacing mathematical symbols in the regulatory text. Notably, the Correction Rule did "not alter the substantive requirements of the final [2024] rule, and will therefore have no cost, environmental, energy, or economic impacts beyond those already presented in the March 8, 2024, Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review final rule (89 FR 16820) and the accompanying Regulatory Impact Analysis." *Id*. at 62,886. The Delay Rule, on the other hand, will allow oil and gas facilities to emit 1.3 million tons of methane, 350,000 tons of volatile organic compounds, and 13,000 tons of hazardous air pollution that would have otherwise been avoided between 2028 and 2038. 2024 EIA at 6, tbl. 3. Such a rule would be far from inconsequential to the public and public health. Further, as evidenced by the thousands of public comments received on the 2024 Rule, and the comments and testimony received from concerned citizens during EPA's September 2, 2025, public hearing, the Delay Rule will

generate, and has generated, great public interest. As such, the Delay Rule is clearly not "inconsequential to the industry and to the public." *Mack Trucks, Inc*., 682 F.3d at 94 (quotation marks omitted).

B. The "impracticability" justification is inapplicable to the Delay Rule

EPA also asserts that pre-promulgation notice and comment is impracticable due to alleged difficulties that industry will have complying with deadlines in the 2024 Rule's new source performance standards. 89 Fed. Reg. at 35,980. Notice-and-comment procedures may be "impracticable" when an agency "finds that due and timely execution of its functions would be impeded by the notice otherwise required [by the APA]." *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 754 (D.C. Cir. 2001); *see also State of N.J., Dep't of Env't. Prot. v. EPA*, 626 F.2d 1038, 1046 (D.C. 1980) ("impracticable" means "a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings" (quoting Senate Committee for APA, S.Doc. No. 248, 79th Cong., 2d Sess. 200 (1946)). The exception "is generally confined to emergency situations in which a rule would respond to an immediate threat to safety, such as to air travel, or when immediate implementation of a rule might directly impact public safety." *NRDC*, 894 F.3d at 114; *see also Mack Trucks, Inc*., 682 F.3d 87, 93 (collecting cases).[54]

EPA's stated concerns here about compliance deadlines do not rise to the level of an emergency warranting the good cause exception. As the D.C. Circuit has made clear, "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). Just 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." *NRDC*, 894 F.3d at 115; *cf. Air All. Hou. v. EPA*, 906 F.3d 1049, 1057 (D.C. Cir. 2018) (striking down delay rule despite EPA's concern about "imposing the rule's substantial compliance and implementation resource burden" on industry pending administrative reconsideration). Moreover, the compliance deadlines for new oil and gas sources subject to the 2024 Rule have long passed and EPA fails to articulate any imminent or serious harm that industry will suffer from complying with the 2024 Rule. In the Delay Rule, EPA claims that meeting the deadlines is unworkable for industry and points to the cost of equipment, strains in supply chain, and logistical challenges as reasons for pushing out compliance. EPA however fails to adequately explain its departure from previous conclusions that the 2024 Rule's deadlines for new oil and gas sources provided ample time for industry compliance, especially considering they were the deadlines requested by oil and gas trade groups during the 2024 Rule's comment period. *See infra* Section V. Further, given that industry filed petitions for administrative reconsideration between April and May of 2024 raising

[54] For example, the Coast Guard will often use the impracticability exception to establish Security Zones and Safety Zones for short term activities that take place on navigable waters. *See e.g*., Special Local Regulation; Bush River and Otter Point Creek; Between Perryman, MD and Edgewood, MD, 90 Fed. Reg. 15,650 (Apr. 15, 2025) (issuing temporary final rule that is immediately effective without actual notice to prohibit persons and vessels from being in certain waters of the Bush River and Otter Point Creek in Maryland during a high-speed power boat race on May 3, 2025, and May 4, 2025).

these very same compliance deadline concerns, the fact that EPA waited over a year to address these compliance challenges undermines its rationale. Any purported imminence is EPA's "own creation" and "[g]ood cause cannot arise as a result of the agency's own delay." *NRDC*, 894 F.3d. at 114.

V. THE DELAY RULE IS UNLAWFUL UNDER THE CLEAN AIR ACT

EPA also lacked Clean Air Act authority to issue the Delay Rule extending the 2024 Rule's compliance deadlines. "Administrative agencies may act only pursuant to authority delegated to them by Congress." *Verizon v. FCC*, 740 F.3d 623, 632 (D.C. Cir. 2014); *see Alabama Power Co. v. Costle*, 636 F.2d 323, 403 (D.C. Cir. 1979) (holding general rulemaking authority did not empower the EPA to extend its authority beyond the limits established by Congress in the Clean Air Act). Here, EPA asserts that the Delay Rule is authorized by "the same CAA provisions that provided authority to issue the regulations being amended: CAA section 111(b)(1)(B) (requirement to review, and if appropriate, revise standards of performance for new sources at least every 8 years) and CAA section 111(d) (requirement to issue [emission guidelines] for existing sources …)." 90 Fed. Reg. at 35,968. But Section 111 of the Clean Air Act does not allow for EPA to essentially stay the 2024 Rule's effective date by delaying the rule's compliance deadlines. Staying a duly promulgated Clean Air Act rule is permitted only in proceedings for "reconsideration" under section 307(d)(7)(B), and only for a period "not to exceed three months." 42 U.S.C. § 7607(d)(7)(B). A person seeking reconsideration must have identified an objection that: (1) it could not have raised in the comment period and (2) is of central relevance to the outcome of the rule. 42 U.S.C. § 7607(d)(7)(B).

Courts have strictly enforced the "threshold" eligibility requirements for reconsideration. *Lead Indus. Ass'n v. EPA*, 647 F.2d 1130, 1172-74 (D.C. Cir. 1980). Reconsideration is not available when a party could have raised an issue during the comment period but failed to do so. Likewise, reconsideration is not available when a party actually did raise the issue in comments. Reconsideration is also unavailable if the agency's final action is a "logical outgrowth" of issues that EPA had timely noticed, and of public comments made on those issues. *North Carolina v. EPA*, 531 F.3d 896, 928-29, *modified on reh'g in part*, 550 F.3d 1176 (D.C. Cir. 2008) (where final rule was a "logical outgrowth," party did "not demonstrate[] that it was impracticable to raise such objection within the comment period," and "therefore . . . fail[ed] to demonstrate a statutory ground that would require reconsideration"); *see Northeast Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 951 (D.C. Cir. 2004) ("An agency satisfies the notice requirement, and need not conduct a further round of public comment, as long as its final rule is a 'logical outgrowth' of the rule it originally proposed.").

EPA admits that the Delay Rule is based on "information received in petitions for reconsideration" that stakeholders submitted to EPA no later than May 2024. 90 Fed. Reg. at 35,969. The Delay Rule is clearly a "direct outgrowth" of a process to reconsider the 2024 Rule, and thus the "functional equivalent of a stay" pending reconsideration under the Clean Air Act. *Air All. Houston*, 906 F.3d at 1061-63. As a result, EPA cannot rely on Section 111 as authority for the Delay Rule. *See id*. at 1061 (rejecting EPA's invocation of a separate, more general authority when it was "indisputably responding to a [Section] 7607(d)(7)(B) petition and reconsidering a rule under that specific provision"). Moreover, EPA cannot meet the threshold requirements of Section 307(d)(7)(B) because all the issues addressed by the Delay Rule were

raised and extensively deliberated during the comment period on the 2024 Rule. The 2024 Rule was based upon two rounds of notice and comment over a three-year period. See 86 Fed. Reg. 63,110; 87 Fed. Reg. 74,702 (Dec. 6, 2022). During the comment periods, stakeholders provided extensive input on—and EPA considered—technical challenges associated with the standards, the anticipated emissions reductions from alternative mitigation technologies, and the cost of mitigation. *Id*. Comments submitted by oil and gas trade groups and companies requested that EPA extend new source compliance deadlines beyond the 60 days upon which the rule would become effective, and the agency granted many of those requests. *See, e.g*., AXPC Supplemental Comments, EPA-HQ-OAR-2021-0317-2326 (Feb. 2023) at 6; API Supplemental Comments, EPA-HQ-OAR-2021-0317-1460 (Feb. 2023) at 60-61. In fact, in almost every case for the standards at issue in the Delay Rule, EPA established compliance dates for both new and existing sources in accord with timelines expressly sought by the regulated industry during the comment periods on the 2024 Rule.

EPA may not use Section 111 to evade the Clean Air Act's clear limit on its authority to delay rules. *See Air All. Houston v. EPA*, 906 F.3d 1049, 1061 (D.C. Cir. 2018); *see Am. Petroleum Inst. v. EPA*, 52 F.3d 1113, 1119 (D.C. Cir. 1995) (holding the general grant of rulemaking power to EPA cannot trump specific provisions of the Clean Air Act). Nor may EPA claim, which it has not yet done, that Section 307(d)(B)(7) authorizes the Delay Rule. And even if that statutory provision did apply, the Delay Rule's 10- to 18-month extensions of the deadlines far exceed the three-month statutory time limit provided by Section 307(d)(B)(7). For these reasons, EPA lacks authority under the Clean Air Act to issue the Delay Rule.

VI. THE DELAY RULE IS ARBITRARY AND CAPRICIOUS

EPA also relies on "administrative agencies' authority to reconsider prior regulations" to issue the Delay Rule. 90 Fed. Reg. at 35,968 (citing *FDA v. Wages & White Lion., LLC,* 145 S. Ct. 898 (2024); *FCC v. Fox TV Stations, Inc*., 556 U.S. 502 (2009); *Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto., Ins. Co*., 463 U.S. 29 (1983)). Given that the Delay Rule represents a reversal of EPA's "former views as to the proper course," *Pub. Citizen v. Steed*, 733 F.2d 93, 98 (D.C. Cir. 1984), EPA must "display awareness that it is changing position," show that "the new policy is permissible under the statute," "believe[]" the new policy is better, and provide "good reasons for the new policy," *Fox*, 556 U.S. at 515. EPA has not met any of these requirements.

As discussed above, the Delay Rule is not permissible under the statute because EPA failed to comply with the rigorous procedural requirements of the Clean Air Act, *supra* section IV., and because the Delay Rule constitutes an impermissible end-run around the Clean Air Act's specific provision authorizing a stay pending administrative reconsideration only under limited circumstances not present here, *supra* section V. Moreover, EPA also fails to adequately explain its departure from previous conclusions that the 2024 Rule's deadlines for new oil and gas sources provided ample time for industry compliance. As stated, the 2024 Rule provided the deadlines originally requested by oil and gas trade groups in their comments on the proposal. *See supra* section V. Based upon this extensive rulemaking record and engagement with stakeholders, EPA found that operators would be able to meet the specified deadlines. EPA also previously determined that compliance assurance requirements for pollution control devices, including combustion devices, flares, and closed vent systems, were integral to several of the

new source performance standards because these devices can malfunction absent performance requirements. *See, e.g.*, 86 Fed. Reg. 63,110, 63,145-46, 63,246 (Nov. 15, 2021). Therefore, in the 2024 Rule, EPA established conditions to ensure that the many standards allowing the use of these devices would achieve optimal and anticipated emission reductions. 89 Fed. Reg. at 16,894-95, 16,898. Now, EPA cites the same technical, logistical, and economical concerns raised during the comment period for postponing industry compliance. Without any data or comprehensive explanation supporting EPA's departure, it appears that the only thing that has actually changed since EPA promulgated the 2024 Rule is the agency's position. But EPA has failed to provide any good reasons or justifications for this change in position.

Finally, with respect to the compliance deadline extension for state plans, EPA has failed to consider a key aspect of the problem—namely, the significant obstacles to compliance caused by EPA's deregulatory agenda. *State Farm*, 463 U.S. 29, 43 (1983). EPA asserts that more time is necessary because "EPA has regularly engaged with various states regarding their concerns" and "compliance assistance efforts from the EPA to the states prompted the EPA to assess the status of the state plan submittal." 90 Fed. Reg. at 35,977. But to the extent states need more time than originally anticipated, it is largely due to the regulatory uncertainty caused by EPA's actions since the change in the federal administration. In January 2025, President Trump issued Executive Order 14154, "Unleashing American Energy," directing agencies to identify those agency actions that "impose an undue burden on the identification, development, or use of domestic energy resources." Following that directive, as part of EPA's "Biggest Deregulatory Action in U.S. History" to "Power the Great American Comeback,"[55] EPA announced that it would reconsider the 2024 Rule to "ensure they do not prevent America from unleashing energy dominance."[56] Administrator Zeldin also characterized the 2024 Rule as "ideologically driven regulations" "used as a weapon to shut down development and manufacturing in the United States."[57] The Delay Rule "marks the first of multiple actions that EPA plans to take to ensure that oil and gas regulations do not overburden producers."[58]

EPA's obviously prejudged commitment to extreme deregulation coupled with this Administration's core mission to expand the use of fossil fuels has resulted in regulatory uncertainty, thereby impeding many of our State agencies' ability to develop plans to implement

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[55] EPA, EPA Launches Biggest Deregulatory Action in U.S. History (March 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.

[56] EPA, Trump EPA Announces OOOO b/c Reconsideration of Biden-Harris Rules Strangling American Energy Producers (March 12, 2025), https://www.epa.gov/newsreleases/trump-epa-announces-oooo-bc-reconsideration-biden-harris-rules-strangling-american

[57] *Id*.

[58] EPA, EPA Extends Several Deadlines in Clean Air Act Rule for Oil and Natural Gas Operations, Fact Sheet, https://www.epa.gov/system/files/documents/2025-07/oil-and-gas-interim-final-rule-2025_-fact-sheet_0.pdf

the 2024 Rule's emission guidelines for existing oil and gas sources. Contrary to EPA's assertions, many of our State agencies have not encountered difficulties in complying with newly revised general implementing regulations including documenting meaningful engagement and producing "remaining useful life and other factors" demonstrations. Rather, many states leveraging pre-existing state programs have made significant progress with their respective state plans. For example, the California Air Resources Board (CARB) has conducted and documented meaningful engagement with stakeholders, identified the types of designated facilities within California that will be covered by the state plan, compiled and compared pre-existing state regulations to corresponding coverage of the 2024 Rule's emission guidelines and determined which state regulations to leverage, determined changes necessary to harmonize CARB's regulations with the 2024 Rule's emission guidelines, conducted analyses to demonstrate equivalency, and begun the rulemaking process to amend existing CARB regulations. Any impediments that States intending to leverage state programs have encountered are attributable to EPA. For example, in July 2024, the New York State Department of Environmental Conservation (NYSDEC) prepared and sent to EPA a spreadsheet comparison of its existing regulations with the 2024 Rule's emission guidelines. Over a year later, NYSDEC is still waiting for feedback from EPA on its comparison, which has been delayed by staffing changes at EPA Region 2. Many states relying on EPA's model rule have also made progress. For example, the Maine Department of Environmental Protection (MDEP) has identified the types of designated facilities (natural gas compressor stations) within the state that will be covered by the state plan and has developed an initial draft state plan based on EPA's model rule. But EPA's deregulatory agenda has undermined regulatory predictability and consistency and has significantly disrupted the regulatory status quo thereby complicating the state planning process.

By ignoring the progress made to date by many of our States and the significant obstacles to compliance created by EPA's deregulatory agenda, EPA has "failed to consider a key aspect of the problem" and thus the Delay Rule is arbitrary and capricious. *State Farm*, 463 U.S. 29, 43 (1983).

VII. EPA'S FAILURE TO ASSIGN ANY MONETARY VALUE TO GREENHOUSE GAS EMISSION INCREASES IS ARBITRARY AND CAPRICIOUS

EPA's failure to consider the cost of greenhouse gas emissions in its Economic Impact Analysis renders the Delay Rule arbitrary and capricious. EPA provides no justification or explanation for its failure, stating only that "[d]ue to the uncertainties related to monetization of impacts from changes in GHG emissions the EPA has elected to not monetize these impacts." EIA at 10. EPA further notes that "[m]onetizing these impacts could potentially result in flawed decision-making due to overreliance on highly uncertain values." *Id*. EPA thus has cast aside its state-of-the-art, peer-reviewed methodology for monetizing the harm caused by greenhouse gas emissions[59] and instead effectively set the social cost of greenhouse gas emissions at zero dollars.

[59] EPA, REPORT ON THE SOCIAL COST OF GREENHOUSE GASES: ESTIMATES INCORPORATING RECENT SCIENTIFIC ADVANCES, SUPPLEMENTARY MATERIAL FOR THE REGULATORY IMPACT ANALYSIS FOR THE FINAL RULEMAKING, "STANDARDS OF PERFORMANCE FOR NEW, RECONSTRUCTED, AND MODIFIED SOURCES AND EMISSIONS GUIDELINES FOR EXISTING

Many of our States have incorporated the costs associated with GHG emissions into our own energy and environmental policies, underscoring the reasonableness and relevance of doing so and the reliance interests that many of our States have developed (and EPA has ignored) on the application of such methodology. EPA thus disregarded or (at best) misapprehended the harms of its actions and failed to consider a central aspect of the problem before it. *See State Farm*, 463 U.S. at 41; *City of Portland v. EPA*, 507 F.3d 706, 713 (D.C. Cir. 2007) (courts "will [not] tolerate rules based on arbitrary and capricious cost-benefit analyses").

A. EPA ignores its own well-established methodologies for monetizing climate-related harms

As stated, EPA effectively treats greenhouse gas emissions as causing zero dollars in monetizable damages. Although EPA fails to state its basis for doing so, the Office of Management and Budget has instructed agencies to "not monetize the impacts from [carbon] emissions" because, allegedly, "the uncertainties in performing monetized impacts quantifications are too great."[60] But courts have repeatedly held that agency analyses that ignore or give spurious treatment to important considerations are infirm. *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011); *Pub. Citizen, Inc. v. Mineta*, 340 F.3d 39, 58 (2d Cir. 2003); *Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983); *Getty v. Fed. Savs. & Loan Ins. Corp*., 805 F.2d 1050, 1055, 1057 (D.C. Cir. 1986); *Sierra Club v. U.S. Dep't of Interior*, 899 F.3d 260, 293 (4th Cir. 2018). The Supreme Court reaffirmed in *Michigan*, 576 U.S. at 753, that "reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions." Further, the fact that something is uncertain—which any effort to project into the future or monetize harms and benefits necessarily is—does not exempt an agency from the obligations to consider relevant factors and reach reasonable conclusions. *Pub. Citizen v. Fed. Motor Carrier Safety Admin.*, 374 F.3d at 1219; *Montana Wilderness Ass'n*, 666 F.3d at 559.

Indeed, courts have rejected agency action for failure to consider the social cost of greenhouse gas emissions. For example, in *Center for Biological Diversity v. NHTSA*, the Ninth Circuit held that NHTSA had acted arbitrarily and capriciously when it established vehicle efficiency standards without monetizing the benefits of greenhouse gas emissions reductions.[61] The Court rejected NHTSA's argument that the value of reducing greenhouse gas emissions was "too uncertain" to quantify:[62] "while the record shows that there is a range of values, the value of carbon emissions reduction is certainly not zero."[63] Moreover, the Court observed that NHTSA

SOURCES: OIL AND NATURAL GAS SECTOR CLIMATE REVIEW" (EPA-HQ-OAR-2021-0317) (Nov. 2023) at 6-9 [hereinafter 2023 EPA Report].

[60] Memorandum from Jeffrey Bossert Clark, Acting Administrator, OIRA, on Guidance Implementing Section 6 of Executive Order 14154 Entitled "Unleashing American Energy" (May 5, 2025), https://perma.cc/DA5M-8FNF.

[61] 538 F.3d 1172, 1198–1203 (9th Cir. 2008).

[62] *Id*. at 1200.

[63] *Id*.

had monetized the value of *other* uncertain benefits, including reduction of criteria pollution, crashes, and increases in energy security.[64] Other courts have held that, if an agency quantifies the economic benefits of an action that could increase greenhouse gases, it must also employ the social cost of greenhouse gas to quantify the costs of the increased emissions.[65] These court decisions recognize that the social cost of greenhouse gas is a reliable and scientifically valid approach to monetizing climate change impacts that should inform federal decision making.

For this reason, the U.S. government has been monetizing costs and benefits since the 1920s, and has been doing so consistently across the entire federal government since 1981.[66] In 2010, the federal government developed a social cost of carbon for use in monetizing the net damages caused by greenhouse gas emissions using an interagency group of experts and relying on state-of-the-art models from the peer-reviewed literature.[67] The history of this process is laid out in more detail in the 2023 EPA Report.[68] The values have been updated at numerous points since 2010 to incorporate advances in science and economics, and have been peer-reviewed, routinely subject to public comment, reviewed by the U.S. Government Accountability Office,[69] and comprehensively evaluated by NASEM in 2016 and 2017.[70] The most recent values reflected in the 2023 EPA Report integrate the latest updates in scientific knowledge and economics, address the near-term recommendations of the National Academies (including explicit representation of uncertainty), and produce a social cost of carbon central estimate of $140, $230, and $390/metric ton for 2030 emissions using a near-term discount rate of 2.5%, 2.0%, and 1.5%, respectively.[71]

EPA does not explain why any of the robust methodologies used to characterize and incorporate these uncertainties in the 2023 Report are insufficient. EPA's 2023 Report draws on

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[64] *Id*. at 1202.

[65] *See Mont. Env't Info. Ctr. v. U.S. Off. of Surface Mining*, 274 F.Supp.3d 1074, 1095–99 (D. Mont. 2017); *High Cnty. Conservation Advocates v. U.S. Forest Serv*., 52 F.Supp.3d 1174, 1189–92 (D. Colo. 2014).

[66] Joseph Persky, *Cost-Benefit Analysis and the Classical Creed*, 15 J. ECON. PERSPS. 199, 200–01 (2001), https://perma.cc/Q3BU-P4CM; Exec. Order No. 12291, Federal Regulation, 46 Fed. Reg. 13,193 (Feb. 19, 1981).

[67] Interagency Working Grp. on the Social Cost of Greenhouse Gases, Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Exec. Order 12866 (Aug. 2016), https://perma.cc/B58R-8F6S.

[68] 2023 EPA Report, *supra* note 59, at 5–19.

[69] *Id.* at 8.

[70] *Id.* at 8–10.

[71] *Id.* at 1, 20–21, 78, 106.

the latest economic and scientific research,[72] was subject to a robust peer review,[73] and fully articulates and addresses the uncertainties involved in calculating the social cost of greenhouse gas—including those now cited by EPA as its justification for not using it. The 2023 Report also explains, in expansive detail, the state-of-the-art methodologies deployed to quantify and address uncertainty, and ensure that the estimates are uncertainty weighted.[74] The approach in the 2023 Report—identifying sources of uncertainty and using techniques like Monte Carlo analysis where the model is run ten thousand times drawing input values from probability distribution functions that reflect the uncertainty associated with those values to characterize uncertainty and develop estimates that are informed by that uncertainty—is rigorous and deploys state-of-the-art methodologies.[75] It results in uncertainty-weighted estimates of the social cost of greenhouse gases that are consistent with other estimates in the peer-reviewed literature derived using alternate methodologies,[76] and it responds to and implements the recommendations of the National Academies of Sciences, after a comprehensive review of the prior federal estimates.[77]

Nor does EPA explain how using the value of zero provides decision-makers better information than the estimates in the 2023 Report. *See* 42 U.S.C. § 7607(d)(3) (requiring EPA to set forth in a statement of basis and purpose, the pertinent findings, recommendations, and comments of the National Academy of Sciences, and to explain why the proposal differs in any important respect). Given the known potential for non-linear responses by the climate system to greenhouse gas forcing that could lead to truly catastrophic damages, a reasonable approach would be to use a *higher* social cost estimate rather than a lower one, let alone zero. The estimates in the 2023 Report are, as EPA acknowledged, only partial estimates of the actual

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[72] *Id*. at 1–2, 24–25, 35–36, 47–53, 55–59, 64, 67–68.

[73] *Id*. at 10 ("The report "represents a huge advance in estimating the US Social Cost of Carbon (SCC). The estimates reported have successfully incorporated all of the short-term recommendations of the National Research Council (NRC) Committee on Valuing Climate Damages, and some of the longer-term recommendations. The report represents the state-of-the-art in executing the four steps of SCC calculation."); *see also* Press Release, EPA, EPA Releases Responses to External Peer Review Comments on "Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances" (Dec. 2, 2023), https://19january2025snapshot.epa.gov/environmental-economics/scghg-tsd-peer-review/index.html.

[74] 2023 Report, *supra* note 59, at 2, 20–21, 26, 61, 64–65, 67–68, 77–79, 80, 85, 168–70.

[75] *Id*. at 20, 61, 77, 80.

[76] *Id*. at 102–03. Estimates in the 2023 Report are comparable in magnitude to other recent social cost of carbon estimates developed using large expert surveys ($200 per metric ton) and vehicle choice experiments of willingness to pay ($236 per metric ton CO_2; $130-$372 per metric ton CO_2). *See also id*. at 98 (discussing total-economy approach, capturing only market effects and deriving a $48 social cost per metric ton of CO_2 estimate).

[77] *Id*. at 1–2, 23, 36, 52–53, 55, 106.

damage values due to the many damage categories that are not included,[78] and a recent study incorporating just part of one category of omitted damages—eight tipping points in the climate system—found that it increased the estimated social cost of carbon by 24.5%.[79] Further, the probability distributions for the 2023 estimates themselves show a very significant risk that the "actual" social cost of greenhouse gas value is much higher than the central estimate.[80] In other words, high-end social cost of greenhouse gas values with a 5% or 10% likelihood of being "correct" are dramatically higher than the central estimate, while the low-end social cost of greenhouse gas values with a 5% or 10% likelihood of being "correct" are much closer to the central estimate. The significant risk that the "actual" damage number is significantly higher than the central estimate, the fact that these estimates are underestimates (omitting many damage categories entirely and covering many more partially), and the fact that estimates of the social cost of greenhouse gas have been increasing over time as data and methodologies have improved,[81] make EPA's proposal to use a value of zero even more arbitrary.

EPA also failed to use some other quantitative or qualitative approach to assess the harm caused by the lost emission reductions. EPA did not consider other estimates of the social cost of greenhouse gas available in the peer-reviewed economics literature—such as FrEDI (also a federal government model)[82] and the 2023 Report's (acknowledged as partial) estimates of physical damages occurring in the United States.[83] Any of these estimates would have been far less arbitrary than zero. And in rulemakings where harms and benefits cannot be monetized—which is *not* the case here—EPA has historically examined the harms and benefits qualitatively, providing a detailed overview of available science on how a pollutant causes harm, the types of harm caused, and the populations most affected. EPA has at its disposal multiple overviews of current climate science and impacts by the Intergovernmental Panel on Climate Change[84] and

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[78] *Id.* at 3, 5, 56, 81–87.

[79] *Id*. at 82 (citing Simon Dietz et al., *Economic Impacts of Tipping Points in the Climate System*, 118 PROC. OF THE NAT'L ACAD. OF SCIS. 1 (2021)).

[80] *Id.* at 80, fig. 3.1.1.

[81] *Id*. at 102; *see also* Richard S. J. Tol, *Social Cost of Carbon Estimates Have Increased Over Time*, 13 Nature Climate Change 532 (2023), https://www.nature.com/articles/s41558-023-01680-x.

[82] 2023 Report, *supra* note 59, at 96–99. A more recent synthesis of damage estimates specific to U.S. populations found U.S.-specific social cost of carbon estimates ranging from $31 to $85 for 2030 emissions, noting many omitted categories of impacts. Elizabeth Kopits et al., EPA, Nat'l Ctr. for Env't Econ., Economic Damages from Climate Change to U.S. Populations: Integrating Evidence from Recent Studies, Working Paper 25-01 at 30 (Jan. 2025), *https://www.epa.gov/environmental-economics/economic-damages-climate-change-us-populations-integrating-evidence-recent.*

[83] 2023 Report, *supra* note 59, at 95, 98–99.

[84] The IPCC was created by the World Meteorological Organization (WMO) and the United Nations to assess the science related to climate change. It is an organization of

five National Climate Assessments developed by leading experts through the U.S. Global Change Research Program. Despite these resources, EPA provided no such discussion in the Proposed Rule, nor did EPA appropriately weigh these well-established climate impacts.

In sum, EPA's proposed determination that the social cost of greenhouse gas cannot be used because of "uncertainty" is not "logical" or "rational." *Michigan*, 576 U.S. at 750. Against hundreds of pages of rigorous analysis in EPA's 2023 Report, EPA's single paragraph citing "uncertainty"—and EPA's total failure to engage with the record supporting its ability to monetize the costs of greenhouse gas emissions—constitutes a failure to provide a "reasoned explanation [] for disregarding facts and circumstances that underlay" its prior policy. *Fox*, 556 U.S. at 516.

B. The States' consideration of the costs of greenhouse gas emissions in their own decisionmaking further demonstrates that EPA's failure to consider those costs was arbitrary and capricious

EPA's failure to consider the costs of greenhouse gas emissions is also arbitrary and capricious in light of the widespread use of such metrics by state governments in analogous regulatory contexts. Indeed, numerous states rely on the costs of greenhouse gas emissions to inform decisionmaking with respect to environment, energy, and infrastructure rulemakings, recognizing it as an essential tool for evaluating the full scope of harms.[85] EPA's refusal to consider these costs—even as states rely on them to assess regulatory impacts—marks a departure from reasoned decisionmaking and from EPA's obligation to consider all relevant factors and serious reliance interests.

For example, New York agencies have considered the cost of greenhouse gas emissions in their own decisionmaking for several years. In August 2016, the New York Public Service Commission adopted a Clean Energy Standard and accompanying Zero Emissions Credit to take into account the social cost of carbon in calculating the value of using nuclear power as

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governments that are members of the United Nations or WMO. Experts volunteer their time to evaluate the scientific papers published each year to provide a comprehensive summary of what is known about the drivers of climate change, its impacts and future risks, and how adaptation and mitigation can abate those risks. Authors are selected based on their expertise. Each report is transparently reviewed by additional experts and the member governments. In each report, the IPCC identifies the strength of scientific agreement in different areas and indicates where further research is needed. *See* IPCC, What Is the IPCC? Fact Sheet (Revised Jan. 2024), https://www.ipcc.ch/site/assets/uploads/2024/04/IPCCFactSheet_WhatisIPCC.pdf.

[85] *See* Inst. for Pol'y Integrity, N.Y.U. Sch. of L., *The Cost of Climate Pollution: States Using the SC-GHG*, , https://costofcarbon.org/states; *see also* MAX SARINSKY, INST. FOR POL'Y INTEGRITY, N.Y.U. SCH. OF L., THE SOCIAL COST OF CARBON: OPTIONS FOR APPLYING A METRIC IN FLUX 1 (Sept. 2023), https://policyintegrity.org/files/publications/SCC_Options_for_Applying_a_Metric_in_Flux_Policy_Brief_v2.pdf.

compared to carbon-emitting fossil fuel generation.[86] New York's Climate Leadership and Community Protection Act directed the New York State Department of Environmental Conservation (NYSDEC) to formally establish a social cost of carbon for use by state agencies, expressed in terms of dollars per ton of carbon dioxide equivalent. NY ECL § 75-0113. In October 2020, NYSDEC published guidance for state agencies to use to consider the social cost of carbon in their decision making.[87] NYSDEC subsequently updated the guidance document by, among other things, revising values for all greenhouse gases to reflect the average values of new models adopted by the EPA.[88] In December 2022, the New York State Climate Action Council published the New York State Climate Action Council Scoping Plan, which used the social cost of greenhouse gases based on NYSDEC's guidance document to calculate the value of avoided greenhouse gas emissions.[89] And in adopting the Advanced Clean Car Standards, NYSDEC considered the social cost of carbon in estimating the monetized benefits of greenhouse gas reductions.[90] Similarly, NYSDEC used EPA's social cost metrics and the department's guidance document to estimate the societal benefits of amended regulations to reduce emissions of HFCs and SF6.[91]

Massachusetts has employed the EPA-issued social-cost of carbon to fully understand and evaluate the impacts of clean energy and energy efficiency programs. As part of its efforts developing Massachusetts' premier energy efficiency program, Mass Save, the state uses EPA-issued social cost of carbon recommendations as part of its Avoided Energy Supply Cost (AESC) study,[92] which is foundational to the Mass Save benefit-cost ratio screening tool that enables

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[86] N.Y. Pub. Serv. Comm'n, Cases 15-E-0302 & 16-E-0270, Order Adopting a Clean Energy Standard (Aug. 1, 2016), https://costofcarbon.org/files/_44C5D5B8-14C3-4F32-8399-F5487D6D8FE8_.pdf.

[87] N.Y. DEP'T OF ENV'T CONSERV., ESTABLISHING A VALUE OF CARBON: GUIDELINES FOR USE BY STATE AGENCIES (rev. Oct. 2021), https://extapps.dec.ny.gov/docs/administration_pdf/vocguidrev.pdf.

[88] N.Y. DEP'T OF ENV'T CONSERV., ESTABLISHING A VALUE OF CARBON: GUIDELINES FOR USE BY STATE AGENCIES 2 (rev. Aug. 2023), https://extapps.dec.ny.gov/docs/administration_pdf/vocguide23final.pdf.

[89] N.Y. CLIMATE ACTION COUNCIL, SCOPING PLAN: FULL REPORT AT 126–27 (Dec. 2022), https://climate.ny.gov/resources/scoping-plan/.

[90] N.Y. Dep't of Env't Conserv. Notice of Adoption, Advanced Clean Car (ACC) Standards, XLV N.Y. Reg. 3-7 (Aug. 23, 2023) (to Amend Parts 200 & 218 of Title 6 NYCRR), https://dos.ny.gov/system/files/documents/2023/08/082323.pdf.

[91] N.Y. Dep't of Env't Conserv. Notice of Adoption, Certain Substances that Contain Hydrofluorocarbons, Highly-Potent Greenhouse Gases, XLVI N.Y. Reg. 21-23 (Dec. 24, 2024), https://dos.ny.gov/system/files/documents/2024/12/122424.pdf.

[92] SYNAPSE ENERGY ECON., INC., AVOIDED ENERGY SUPPLY COSTS IN NEW ENGLAND (AESC): 2024 REPORT (Feb. 7, 2024), https://www.synapse-energy.com/avoided-energy-supply-costs-new-england-aesc.

many decarbonization and energy efficiency measures to be cost-effective and so able to be included in the programs.[93] Similarly, the EPA social cost of carbon has been critical for the state's greenhouse gas reduction plans, which must "evaluate the total potential costs and economic and noneconomic benefits of various reduction measures to the economy, environment and public health, using the best available economic models, emissions estimation techniques and other scientific methods."[94] The social cost of carbon metrics helped provide decisionmakers and the public with an understanding of the costs and benefits of climate policy. The Massachusetts Clean Energy and Climate Plan for 2025 and 2030, for example, included an assessment of policies' "employment gains and disruptions, economic contribution to Gross State Product (GSP), and impacts on household energy expenditures."[95]

Similarly, Colorado requires the use of the social cost of carbon dioxide emissions and methane emissions in several circumstances. For instance, the Colorado Public Utilities Commission must annually set a value for the social cost of carbon dioxide and methane, and must require any electric or gas public utility subject to its jurisdiction to consider the social cost of carbon dioxide and methane when determining the cost, benefit, or net present value of various plans the utility is required to file for Commission approval.[96] This includes clean heat plans,[97] electric resource plans/clean energy plans, transportation electrification plans, beneficial electrification plans, renewable energy standards plans, and demand-side management plans.[98] Relatedly, when estimating the social cost of carbon dioxide or methane, the Colorado Energy Office, Department of Transportation, and Department of Public Health and Environment must base their cost estimate on the most recent assessment of the federal government using a discount rate that is 2.5% or less and does not yield a lower estimate of costs.[99]

California also uses the social cost of carbon in a variety of contexts. In 2017, when the California Air Resources Board developed a scoping plan to meet the state's statutory emissions reduction goals, it used the social cost of carbon to quantify the benefits of reducing greenhouse-gas emissions.[100] The State Legislature has also mandated that the Board consider the social costs

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[93] *See* An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy, 2021 Mass. Acts 8, §§ 16–27.

[94] *See id*. § 10(c).

[95] MASS. EXEC. OFF. OF ENERGY & ENV'T AFFS., MASSACHUSETTS CLEAN ENERGY AND CLIMATE PLAN FOR 2025 AND 2030, at 103 (June 20, 2022), https://www.mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download.

[96] Colo. Rev. Stat. § 40-3.2-106(1), (4) (2021).

[97] *Id*. § 40-3.2-108(6)(c)(I).

[98] *Id*. §§ 40-3.2-106(1)(a)–(d) & 40-3.2-107(2).

[99] Colo. Reb. Stat. § 24.38.5-111 (2021).

[100] CARB, CALIFORNIA'S 2017 CLIMATE CHANGE SCOPING PLAN 39-40 (Nov. 2017), https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf; CARB, ACC 2 SRIA at 46-49, https://perma.cc/24W5-DTCV.

of emissions of greenhouse gases when adopting rules and regulations related to the California Global Warming Solutions Act.[101] Similarly, in 2019, the California Public Utilities Commission issued a final order requiring the use of the social cost of carbon for evaluating distributed energy resources.[102] Specifically, under the order, utilities must conduct a societal cost test in resource planning that is comprised of three parts, one of which is the "avoided social cost of carbon." The final order requires utilities to model the social cost test using two social cost of carbon values, the 3% estimate and high-impact estimate. The California Department of Transportation has also used the social cost of carbon in its cost-benefit analysis of proposed projects such as highways and other infrastructure since 2009.

Still more states use the social cost of greenhouse gases in their regulatory programs. In Maryland, the Climate Solutions Now Act of 2022 requires the Maryland Department of the Environment to adopt regulations for Building Energy Performance Standards, including an option for covered building owners to make an alternative compliance payment greater than or equal to the social cost of greenhouse gases adopted by EPA for emissions above target levels.[103] In Oregon, the Oregon Public Utility Commission commonly asks utilities to undertake scenario runs that include consideration of the social cost of carbon to determine the least cost/least risk options in their proposed integrated resource plans and requests for proposals.[104]

These examples demonstrate that EPA's refusal to consider the social cost of carbon ignores a widely accepted and readily available tool for evaluating the consequences of the Delay Rule, which by EPA's own admission will result in significant greenhouse gas emissions. Indeed, the federal government has been using estimates of the social cost of greenhouse gases since 2008 (including during the first Trump Administration) and has been working to improve the rigor of those estimates during the nearly two decades since. By failing to account for the climate costs and harms that will inevitably result from the Delay Rule, EPA acted arbitrarily and capriciously and failed to account for a crucial aspect of the problem and serious reliance interests on social cost of carbon analyses.

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[101] Cal. Health & Safety § 38562.5 (2022).

[102] Cal. Pub. Utils. Comm'n, Rulemaking 14-10-003, Decision Adopting Cost-Effectiveness Analysis Framework Policies for All Distributed Energy Resources 15 (May 21, 2019), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M293/K833/293833387.PDF; Inst. for Pol'y Integrity, N.Y.U. Sch. of L., *The Cost of Climate Pollution: California PUC Uses SCC to Help Determine Value of DERs* (Mar. 2018), https://costofcarbon.org/states/entry/california-puc-uses-scc-to-help-determine-value-of-ders.

[103] Md. Code Ann., Env't, § 2-1602 (2022).

[104] *See*, *e.g.*, In the Matter of Pacificorp, dba Pacific Power, 2021 WL 5014456 (Or. P.U.C. 2021); In the Matter of Avista Corporation, dba Avista Utilities, 2021 WL 4923923 (Or. P.U.C. 2021).

VIII. CONCLUSION

In sum, the States respectfully request that EPA revise the Delay Rule in response to comments received and issue a final rule that maintains the compliance deadlines for new oil and gas sources that were originally set forth in the 2024 Rule. We also request that EPA continues to provide a strong national foundation to reduce methane emissions from existing oil and gas sources by supporting our state planning processes to the fullest extent possible without any more delays.

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