EARTHJUSTICE
BECAUSE THE EARTH NEEDS A GOOD LAWYER

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August 1, 2025

VIA REGULATIONS.GOV
FEDERAL E-RULEMAKING PORTAL

U.S. DEPARTMENT OF THE INTERIOR
1849 C Street NW, MS 5020
Washington, DC 20240

RE: EARTHJUSTICE COMMENTS ON NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING REGULATIONS
U.S. Department of Interior, Docket ID: DOI-2025-0004

U.S. Department of the Interior,

Please see enclosed comments submitted by Earthjustice in response to U.S. Department of the Interior's National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 29498 (July 3, 2025), Docket ID: DOI-2025-0004.

Sincerely,

Jan E. Hasselman
Senior Attorney

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U.S. DEPARTMENT OF THE INTERIOR
1849 C Street NW, MS 5020
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Docket ID: DOI-2025-0004

I. Introduction

The following comments are being submitted to the Department of the Interior (the "Agency" or "Interior") by Earthjustice, the nation's leading environmental law firm. For many decades, on behalf of hundreds of our clients and partners, Earthjustice has worked to implement the National Environmental Policy Act ("NEPA") in Congress, in the courts, and in the federal agencies to meet its ambitious goals and realize its promise.

The Agency has published an Interim Final Rule ("IFR"), *National Environmental Policy Act Implementing Regulations*, 90 Fed. Reg. 29498 (July 3, 2025), which "partially rescind[s]" and makes other updates to its NEPA regulations, *id.* at 29498. The Agency now will maintain many of its NEPA rules "in a non-codified Handbook,"90 Fed. Reg. at 29498; *see* Dep't of Interior, *Handbook of National Environmental Policy Act Implementing Procedures* (hereinafter "DOI Handbook").[1] We ask that you carefully consider and respond to these comments, along with the attachments submitted herewith, before implementing this ill-advised plan.

NEPA is the lodestar of America's environmental conscience and actions. In NEPA, Congress articulated environmental policies and goals for the United States while acknowledging the "worldwide and long-range character of environmental problems." 42 U.S.C. § 4332(I). Fully implemented, NEPA can help the nation meet its central environmental challenges, including climate change, the collapse of biological diversity, and the ongoing failure to achieve environmental justice. While full implementation of NEPA has yet to be realized, NEPA's procedural requirements have changed the nature of federal decision making for the better by providing thorough analysis and public involvement. The prior administration's actions to update and modernize NEPA's implementing regulations were a crucial step in the right direction.

Through NEPA, communities have been able to learn ahead of time when their government is proposing to permit the expansion of an airport, a new management plan on a nearby national forest, or a new deepwater port for export of coal. Through NEPA, Americans living, working, and recreating near or on public lands have had an opportunity to consider proposed changes to land management plans and actions such as proposed timber harvest, oil and gas leasing, and road construction, and to influence those decisions. Through NEPA, communities have had an opportunity to have their voices heard before construction of a proposed highway that might divide it.

[1] https://www.doi.gov/media/document/doi-nepa-handbook (last visited July 31, 2025).

Receiving public comment is only part of the NEPA process. Those comments must be evaluated and considered by federal agencies when they are making decisions. Through compliance with the previously applicable regulations, federal agencies have learned that they are expected to stop, look, and listen to the public that they serve before committing resources. Through public comments and input from other agencies, lead agencies learn of better alternatives to achieve a particular goal while minimizing harm to communities, public land, and the environment. Federal agencies have learned important new information about land that it manages or communities in which it operates. In short, while implementation has been far from perfect, Americans have benefitted from the important information and public involvement achieved through NEPA's implementation.

Even so, this administration has expressed relentless hostility towards NEPA and has taken unprecedented steps to undermine it. It declared that development of fossil fuel energy and other natural resources are a higher priority than environmental protection and community engagement. It revoked the Council on Environmental Quality's ("CEQ") long-standing implementing rules, leaving agencies on their own to come up with their own standards, and it has continually sent the message that compliance with NEPA should be kept to a bare minimum. Without the scaffolding and direction of the CEQ rules that have served that role for 50 years, it was incumbent on individual agencies to do more to fill in the gaps in the statute and provide clear standards and direction that will ensure that NEPA's goals are fulfilled.

This IFR does precisely the opposite. It does not include a suitable replacement for the clear standards that had been present in CEQ's most recent regulations. Instead, the Agency's approach leaves the public with little clarity on what will be considered and how they can participate, and it will require courts to evaluate NEPA compliance on a case-by-case basis. This will all but ensure that the Agency will fail to implement NEPA's ambitious goals of informed and transparent decision making. And it will do nothing to achieve the administration's goals of efficiency, certainty, and reduced controversy. To the contrary, it is well-demonstrated that taking the time to disclose impacts, consult with effected stakeholders, and assess alternatives yields great dividends in terms of reducing controversy and getting projects on the ground more efficiently.

We urge you to stop this relentless assault on Congressionally mandated principles. Start by withdrawing the IFR. Initiate a good faith public process to update and overhaul your NEPA implementation procedures. These should be issued as draft rules subject to comment, with a reasonable timeline for comments—far more than what was offered here. In the meantime, commit to adhering to the 2024 version of CEQ's regulations—the last version adopted by CEQ prior to their revocation—while you engage with the public going forward.

II. The Agency's Process For Finalizing Revisions To NEPA Regulations Is Unlawful And Inadequate.

A. The Agency was obligated to undertake notice and comment before modifying its NEPA regulations.

The Agency's IFR rescinding its previous NEPA regulations and replacing them with a handbook is immediately effective. The Agency is using an interim final rule, providing a subsequent public comment period with the potential for a final-final rule to follow. The Agency justifies its inversion of the process by invoking three exceptions to notice and comment rulemaking: for "rules of agency organization, procedure, or practice" ("procedural rules"); for guidance documents (interpretive rules and policy statements); and when the agency, for "good cause," finds that notice and comment is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(A)&(B). The Agency, however, fails to grapple with the limited nature of these exceptions and generally ignores the caselaw that defines their contours.

Courts have found that the Administrative Procedure Act's ("APA") notice and comment exceptions must be "narrowly construed and only reluctantly countenanced" in order to safeguard the underlying principles of the APA that favor public participation and agency information gathering. *New Jersey Dep't of Env't Prot. v. EPA*, 626 F.2d 1038, 1045 (D.C. Cir. 1980); *see also Alcaraz v. Block*, 746 F.2d 593, 612 (9th Cir. 1984). Indeed, it is "antithetical to the structure and purpose of the APA for an agency to implement a rule first, and then seek comment later." *Paulsen v. Daniels*, 413 F.3d 999, 1005 (9th Cir. 2005). Given the presumption favoring public comment in advance of a final rule, the agencies have not adequately justified bypassing the "primary method of assuring that an agency's decisions will be informed and responsive." *New Jersey*, 626 F.2d at 1045.

First, the APA's exception for procedural rules does not apply. The Agency relies heavily on the Supreme Court's recent decision in *Seven Cnty. Infrastructure Coal. v. Eagle Cnty*., 145 S. Ct. 1497 (2025), repeatedly citing the opinion's recognition that NEPA is itself a procedural statute. But *Seven County* broke no new ground: NEPA's approach to environmental review of agency action has been acknowledged by the courts since the statute's inception. *See, e.g.*, *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc*., 435 U.S. 519, 558 (1978) (noting that NEPA's "mandate to the agencies is essentially procedural"). Nevertheless, the agency claims a newly articulated categorical rule that regulations that are for "implementing a purely procedural statute must be, by their nature, procedural rules." 90 Fed. Reg. at 29502. This formulation misconstrues the underlying nature of NEPA and the courts' common-sense approach to determining when the exception applies.

Congress's ambitions in passing NEPA were inarguably expansive, seeking to bring about substantively better outcomes for agency decisionmaking. *See, e.g*., 42 U.S.C. § 4321 (noting that the purpose is "to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man"); *id.* at § 4331(b)(1)

(establishing that the federal government must "use all practicable means" to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations"). Furthermore, NEPA's procedural demands and its lofty ambitions are intimately linked: the "sweeping policy goals announced in § [4331] of NEPA are thus realized through a set of 'action-forcing' procedures that require that agencies take a 'hard look' at environmental consequences." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (citation omitted; citation modified). In this instance, the procedure *is* the substance. *See, e.g.*, *Seven County*, 145 S. Ct. at 1510 ("Properly applied, NEPA helps agencies to make better decisions[.]").

In contrast, procedural rules exempted from the APA's notice-and-comment provisions are properly understood to relate primarily to "internal house-keeping measures organizing agency activities." *Am. Fed'n of Lab. & Cong. of Indus. Orgs. v. Nat'l Lab. Rels. Bd.*, 57 F.4th 1023, 1034 (D.C. Cir. 2023) (discussing the "limited carveout" for procedural rules); *see e.g.*, *Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 250 (D.C. Cir. 2014) (finding rules governing the processing of petitions to be procedural rules); *Lamoille Valley R.R. Co. v. Interstate Com. Comm'n*, 711 F.2d 295, 327–28 (D.C. Cir. 1983) (finding a modified scheduling deadline to be a procedural rule). The IFR here goes far beyond this narrow "housekeeping" function—for example—by regulating the threshold for applying NEPA, defining when the public will have an opportunity to comment, and establishing the bounds of the Agency's analyses.

Nor have courts applied a simple binary to an underlying statute in order to determine whether the APA's procedural exemption applies. Instead, the focus is on the rules themselves, and the question is "functional, not formal," requiring an examination of how rules affect "not only the 'rights' of aggrieved parties, but their 'interests' as well. *Chamber of Com. of U.S. v. U.S. Dep't of Lab.*, 174 F.3d 206, 212 (D.C. Cir. 1999) (citation omitted; citation modified).

The interests at stake here are plain. If the federal government as a whole is to meet the congressional aspirations expressed in NEPA as well as the public's concomitant interest in seeing those aspirations realized, then the Agency's implementing regulations are a critical component. The public has long relied on the influence of NEPA and its procedures to facilitate factual and scientific disclosures, allow communities—including regulated parties—to directly engage with government agencies, and shape outcomes by affecting how agencies address environmental effects and develop mitigation measures. Because appropriate implementing regulations are indisputably critical to NEPA's success, agencies cannot shoehorn their changes into the APA's "procedural" box in order to evade traditional public review.

Second, the Agency's claims fall well short of the stringent requirements needed to establish "good cause." The exception is not intended as an "'escape clause,'" and consequently, a court's inquiry is necessarily "meticulous and demanding." *New Jersey*, 626 F.2d at 1046 (quoting the Senate's APA Committee Report); *see also United States v. Valverde*, 628 F.3d 1159, 1164 (9th Cir. 2010) (an agency "must overcome a high bar if it seeks to invoke the good cause

exception"). A finding of good cause generally should be limited to "emergency situations" or "where delay could result in serious harm," *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004) (citation omitted). Neither situation is present here.

The Agency contends that conventional rulemaking is "impracticable, unnecessary, or contrary to the public interest." 90 Fed. Reg. at 29502. The Agency maintains that it must act expeditiously following CEQ's rescission of its own NEPA rules in order to provide certainty and avoid a "makeshift regime" in which Agency regulations cite to and rely on the CEQ regulations that no longer exist. *See* 90 Fed. Reg. at 29503. But courts have already rejected this very argument. An agency's desire to "eliminate more quickly legal and regulatory uncertainty is not by itself good cause." *California v. Azar*, 911 F.3d 558, 576 (9th Cir. 2018); *see also United States v. Cotton*, 760 F. Supp. 2d 116, 128 (D.D.C. 2011) (collecting cases).

Moreover, the claimed urgency is entirely a matter of choice. As the Agency concedes, it has been relying on the previous regulatory scheme even after CEQ rescinded its rules. 90 Fed. Reg. at 29502 (has been "continuing to operate under its prior procedures *as if* the CEQ regime still existed"). The Agency has made clear that it expects to *continue* to apply the prior rules going forward. 90 Fed. Reg. at 29500 ("[R]evised agency procedures will have no effect on ongoing NEPA reviews . . . ."). This comports with CEQ's advice to agencies that they "should consider voluntarily relying on those regulations in completing ongoing NEPA reviews." Memorandum from Katherine R. Scarlett, CEQ Chief of Staff, Implementation of the National Environmental Policy Act, at 1 (Feb. 19, 2025).[2] Under the circumstances, the purported emergency is both legally and factually untenable.

Moreover, the agency could just as easily have used an IFR to temporarily continue relying on CEQ's NEPA regulations, while using traditional notice and comment to develop the next iteration of rules. That approach would minimize any perceived instability and confusion during the transition while allowing the public a greater degree of insight into and influence over the process. Instead, the agency imposed drastic revisions to its implementing regulations while inverting the public comment process under the cover of a manufactured emergency.

Finally, the claim to the APA's exception for statements of policy and interpretive rules does not withstand even the slightest scrutiny. The Agency appears to believe that its prefatory and definitional sections "may" qualify as guidance documents. The Agency suggests that "[an interpretative rule provides an interpretation of a statute, rather than making discretionary policy choices that establish enforceable rights or obligations for regulated parties under delegated congressional authority." 90 Fed. Reg. at 29502. It then explains that the "definitions section of both the old and new procedures . . . may be classified as such." 90 Fed. Reg. at 29502. And it explains that the "prefatory sections" of the new and existing procedures may be classified as

[2] https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf (last visited July 30, 2025).

general statements of policy, because they "provide notice of an agency's intentions as to how it will enforce statutory requirements, again without creating enforceable rights or obligations for regulated parties under delegated congressional authority." 90 Fed. Reg. at 29502. Other than asserting it must be so, the Agency does not explain why these portions of the prior and new regulations must be classified this way—after all, the definitions and prefatory components of CEQ's NEPA regulations long have played a role in determining whether the Agency has met its NEPA obligations. In any event, even assuming this thinly reasoned and tentatively expressed claim has merit, there is no justification—and the Agency provides none—for exempting an entire rule based on select portions qualifying as guidance documents.

B. A 30-day comment period is insufficient.

Nonetheless, the Agency has "elected voluntarily to solicit comment." 90 Fed. Reg. at 29503. Solicitation of comments after the rules have been changed is hardly an indicator of good faith. And the selected process—a brief 30-day comment period that commenced just before a holiday weekend—is the opposite of good government.

This revision to the Agency's NEPA process was substantial, amounting to a comprehensive, substantive revision of the Agency's approach to implementing NEPA. And yet, the Agency has called for substantially less public engagement than CEQ allowed with past revisions to NEPA regulations. When CEQ initiated the rulemaking that resulted in the 2020 regulations, it first issued an advance notice of proposed rulemaking, where it ultimately gave commenters 61 days to respond. *Update to the Regulations Implementing the Procedural Provisions of NEPA*, 85 Fed. Reg. 1684, 1690 (Jan. 10, 2020). CEQ then issued a notice of proposed rulemaking, which provided for another 60 days of public comment. *Id.* at 1684. When CEQ kicked off the Phase 1 NEPA rulemaking in 2021, it offered a 45-day comment period. *See* NEPA, *Implementing Regulations Revisions*, 87 Fed. Reg. 23453, 23455 (Apr. 20, 2022) (final rule describing commenting process). For the Phase 2 rulemaking in 2023, CEQ again used a 60-day comment period. NEPA, *Implementing Regulations Revisions Phase 2*, 88 Fed. Reg. 49924, 49924 (July 31, 2023) (notice of proposed rulemaking). On top of longer comment periods, these rulemakings also called for public meetings. *Id.* (Phase 2, four public meetings); 86 Fed. Reg. at 55757 (Phase 1, two public meetings); 85 Fed. Reg. at 1684 (2020 ANPRM, two public hearings). Here, by contrast, no public meetings have been called for.

Giving the public less time to digest and respond makes little sense. It would take considerable time just to understand the regulatory changes any given agency has made. The Agency has disregarded the most recent NEPA regulations, and it replaced them with a hodgepodge of the most recent CEQ regulations, portions of the 2020 CEQ regulations that had been discarded, and some new provisions. It has made its changes all the more undecipherable by including only a short regulatory preamble that described the changes in only the most general terms. There is no clear explanation of the ways the current approach differs from the regulations—both agency-specific and CEQ—that came before, let alone an explanation for why

the Agency believes this approach to be preferable. In other words, it will take time to digest what issues the new NEPA process raises and are worth commenting on.

The challenge is multiplied in light of the number of agencies modifying their guidance at the same time. It would be difficult enough to work through these kinds of changes for a single agency. That effort is more challenging still where, as here, the public is expected to respond to at least fifteen distinct agency actions, each of which purports to make sweeping changes from what came before. Any expectation that the public can comprehensively respond in 30 days is wrong at best and cynical at worst. On behalf of our clients and partners we have asked for an extension of the comment deadline but have not even received the courtesy of a response, let alone an explanation for why an extension was denied.

III. The Agency Has Not Adequately Explained Its New Approach To NEPA Review.

When an agency makes a decision, it must "give adequate reasons" for that decision. *Encino Motorcars v. Navarro*, 579 U.S. 211, 221 (2016). It must at least "articulate a satisfactory explanation for its action." *FCC v. Fox Television Stations*, 556 U.S. 502, 513 (2009). Where an "agency has failed to provide even that minimal level of analysis," its decision cannot stand. *Encino Motorcars*, 579 U.S. at 221. The Agency has not sufficiently explained its new NEPA rules here. While we provide specific examples of this failure to explain throughout this comment letter, three general points bear emphasis.

First, despite comprehensively rewriting the Agency's NEPA rules, the explanation it has given is extraordinarily thin. There is no real explanation in the short regulatory preamble, and the few scraps of reasoning in the IFR do not support the sweeping changes the Agency has made.

Second, the Agency has failed to acknowledge, yet alone explain why, it has deviated from the NEPA review process required by either its prior rules or the 2024 CEQ regulations. The Agency is not writing on a blank slate, so it was required to explain why it took a different approach here.

Finally, the Agency has not resolved tensions between the approach it has adopted to NEPA review and differing approaches adopted by other agencies.

A. The Agency did not sufficiently explain its new rules for implementing NEPA.

To explain its new NEPA process, the Agency has included only a short regulatory preamble that refers to rules it has adopted in the most general of terms. What is lacking is any "reasoned explanation for its action." *Fox*, 556 U.S. at 515; *cf. Tourus Records v. DEA*, 259 F.3d 731, 737 (D.C. Cir. 2001) ("That is not a statement of reasoning, but of conclusion. It does not 'articulate a satisfactory explanation' for the agency's action."). The "conclusory" explanations contained in the preamble—pitched at a general level and not to justify any specific rules it has

adopted—"fall[] far short of what is required" for non-arbitrary decisionmaking. *See Am. Trucking Ass'ns v. Fed. Motor Carrier Safety Admin.*, 724 F.3d 243, 253 (D.C. Cir. 2013).

Indeed, the sum total of the Agency's explanation for the specific choices it has made is that where it has "retained an aspect of [its] preexisting NEPA implementing procedures, it is because that aspect is compatible with" several general "guiding principles; where [it] has revised or removed an aspect, it is because that aspect is not so compatible." 90 Fed. Reg. at 29501. This kind of catch-all does not come close to satisfying the Agency's obligation to explain the decisions it has made. The Handbook accompanying the IFR, for its part, does not contain any further explanation.

B. The Agency has failed to adequately explain its change in position from its prior NEPA rules and CEQ's approach to NEPA review.

That lack of explanation also violates another cornerstone of administrative law. Agencies are "free to change their existing policies as long as they provide a reasoned explanation for the change." *Encino Motorcars*, 579 U.S. at 212. An agency must at least "display awareness that it *is* changing position." *Fox*, 556 U.S. at 515. It cannot "depart from a prior policy sub silentio." *Id.* And, in the end, the Agency "must show there are good reasons for the new policy," and where an explanation was given for the prior policy, "reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Id.* at 515–16. Indeed, where an agency contradicts an earlier discussion or earlier findings, it must explain its approach. *See U. S. Sugar Corp. v. EPA*, 830 F.3d 579, 650–51 (D.C. Cir. 2016). The Agency has failed to satisfy this obligation, on two levels.

First, the Agency has departed from what its prior NEPA rules required. Those changes have been in form—taking its regulations off the books to use a non-codified handbook—and substance—eliminating, for example, the requirement that the Agency prepare a draft environmental impact statement ("EIS") and require public comment on the same. DOI Handbook §§ 2.1(b), (c), 3.3; *compare* 43 C.F.R. §§ 46.200(b), 46.305, 46.435. Despite these substantive shifts, the Agency has not offered a word of explanation for them. Even if some changes may require little explanation—for example, removal of references to CEQ regulations that are no longer on the books—substantive changes in the Agency's NEPA process surely do.

Second, the Agency has not just removed references to CEQ's implementing regulations but has, in many respects, departed from the substantive approach CEQ has used for decades. Yet it has not explained why it changed its approach to implementing NEPA from what the most recent CEQ regulations required. Since 1979, CEQ's regulations have been the touchstone agencies have looked to in establishing their own process for implementing NEPA. A version of those regulations have been in place until earlier this year, when CEQ rescinded them. *See Removal of National Environmental Policy Act Implementing Regulations*, 90 Fed. Reg. 10610, 10611 (Feb. 25, 2025).

It cannot be disputed that the Agency has departed, in multiple ways. For example, while the CEQ regulations required that the agency "shall . . . [r]equest the comments of . . . [t]he public" when preparing a "draft environmental impact statement," 40 C.F.R. § 1503.1, [3] the Agency now has made that step optional. DOI Handbook §§ 2.1, 3.3. The Agency has not explained that shift. Similarly, the CEQ regulations provided clear definitions about the types of environmental effects agencies should consider. 40 C.F.R. § 1508.1(i) (describing "direct effects," "indirect effects," and "cumulative effects" and the role for considering "environmental justice concerns" and "climate-change-related effects"). These were considered choices made by CEQ and long implemented by the Agency and backed up with pages of reasoning. *See National Environmental Policy Act Implementing Regulations Revisions Phase 2,* 89 Fed. Reg. 35442, 35538–39 (May 1, 2024). And yet the Agency has eliminated those portions of the regulations, leaving nothing to replace them, and it did so without a word of explanation.

In still other examples, the Agency has included provisions that CEQ previously rejected as inappropriate, confusing, or unwise. Take, for example, the provision that indicates that the Agency will prepare a supplemental environmental impact statement only if "a major Federal action remains to occur." DOI Handbook § 3.6(a). Just last year, CEQ explained that it was using a different phrase "incomplete and ongoing," precisely because "remains to occur" was "vague" and the latter phrase provided "more clarity." 89 Fed. Reg. at 35499. While the two terms have the "same substantive meaning," the agency's failure to display any awareness that it was making a shift, let alone explain its reason for doing show, is strong evidence that the Agency has not contended with the prior regulations. *See Maine Lobstermen's Ass'n v. Nat'l Marine Fisheries Serv.*, 70 F.4th 582, 598 (D.C. Cir. 2023) (agency displayed no "awareness of its own flip flop").

In another example, the Agency has exempted actions from NEPA review where the "proposed action is an action for which another statute's requirements serve the function of agency compliance with NEPA." DOI Handbook § 1.1(a)(5). That approach conflicts with the statute, but it also conflicts with recent CEQ guidance. Just last year, CEQ declined to include such a requirement because it goes "beyond the scope of the NEPA statute and case law" and "could be construed to expand functional equivalence beyond the narrow contexts in which it has been recognized." 89 Fed. Reg. at 35459–60. CEQ explained that decision across two pages, and yet again, the Agency here took the opposite approach but offered no explanation or engagement with these formidable issues. These are just a few examples out of many where the Agency abruptly changed course without explaining why.

Nothing the Agency said in its limited explanation for its new NEPA rules could support refusing to engage with CEQ's regulations and reasoning.

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[3] All citations to the NEPA regulations in 40 C.F.R. refer to the 2024 version of the regulations, unless otherwise specified.

To start, the Agency's explanation that that there are no "reliance" interests does not justify its failure to explain its changed position. 90 Fed. Reg. at 29500. That argument operates from the flawed premise—addressed above—that the rules implementing NEPA are procedural. In any event, the absence of reliance interests does not mean that the Agency would owe no explanation. All that means is that the "agency need not . . . provide a *more* detailed justification than what would suffice for a new policy created on a blank slate." *Fox*, 556 U.S. at 515 (emphasis added). But it still must "show that there are good reasons for the new policy." *Id.* The agency has not met even that bare minimum requirement here.

Second, the fact that CEQ's regulations have been rescinded does not justify ignoring its latest guidance and reasoning on the appropriate way to implement NEPA. CEQ did not remove its NEPA regulations because they represented an improper interpretation of the statute. Rather, as CEQ explained, it removed the regulations because Executive Order 14154 directed their removal and CEQ could identify no other authority for issuing binding NEPA regulations. *See* 90 Fed. Reg. at 10613. Even if CEQ's approach to implementing NEPA no longer can be binding, its views on the best way to implement the statute and extensive explanation for those views have not gone away. The "reasons for the old" policy are still on the books, so the Agency must "show that there are good reasons for the new policy." *Fox*, 556 U.S. at 515. Declining to consider decades of CEQ experience with the statute also no doubt "entirely fail[s] to consider an important aspect of the problem." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Accordingly, the Agency was obligated to explain any differences in the approach it took.

In fact, as discussed further below, Congress has repeatedly signaled its acquiescence in CEQ's regulations, reflecting that CEQ's prior interpretation would be the best interpretation of NEPA. Likewise, as CEQ itself acknowledged in rescinding its regulations, the Supreme Court has looked to those regulations as appropriately implementing the statute. 90 Fed. Reg. at 10613 (collecting cases). For both of these reasons, the Agency would be expected to engage with CEQ's interpretations before it changes course.

There are additional reasons that an Agency must heed CEQ's views. NEPA instructs agencies that when they are "develop[ing]" their "methods and procedures," they must do so "in consultation with the Council on Environmental Quality." 42 U.S.C. § 4332(B). This reflects a continuing obligation to account for CEQ's approach to implementing NEPA. Indeed, CEQ recognized as much in its interim final rule rescinding its regulations. 90 Fed. Reg. at 10612. Moreover, it always is CEQ's obligation to "formulate and recommend national policies to promote the improvement of the quality of the environment." 42 U.S.C. § 4342. Where CEQ has spoken clearly, and repeatedly, on what policies achieve those goals, agencies must take notice. And even if the Agency were free to disregard CEQ's guidance, the Agency still must at least explain why it has come to a different view.

Third, the Agency also is wrong that the need to implement the Fiscal Responsibility Act could justify starting from scratch and ignoring CEQ's regulations. After all, the Act incorporated longstanding features of CEQ's regulations, *see* 89 Fed. Reg. at 35443 ("The amendments codify longstanding principles drawn from CEQ's NEPA regulations . . . ."), and CEQ already had made extensive "revisions to the regulations to implement the amendments to NEPA made by the Fiscal Responsibility Act," 89 Fed. Reg. at 35447. If anything, throwing out CEQ's considered response to the FRA with nothing to replace it violates Congress's directive.

Finally, the Supreme Court's decision in *Seven County* also does not justify abandoning CEQ's regulations. To the extent that decision required any "course correction of sorts," it was not for the executive branch, but for courts, "some" of which "ha[d] assumed an aggressive role in policing agency compliance with NEPA." *See Seven County*, 145 S. Ct. at 1511, 1514. It makes no sense to read that decision as calling for changing—let alone abandoning—the longstanding regulatory approach embodied in CEQ's regulations. The validity of CEQ's regulations was not before the Court. To the contrary, the Court held that the agency's application of those regulations produced a decision that warranted deference because the agency's "approach complied with NEPA and this Court's longstanding NEPA precedents." *See id.* at 1511, 1515. Indeed, the Court affirmed one component of CEQ's regulations—that "indirect effects can sometimes fall within NEPA," *id.* at 1515—that this Agency has left on the cutting room floor. There is nothing in the decision to suggest that it invites the executive branch to revisit CEQ's regulations, or even that the Court would approve of the approach to environmental review—an approach that removes process that ensured "the agency has addressed environmental consequences and feasible alternatives," *id.* at 1511—the Agency has adopted here.

C. The Agency has not explained inconsistencies between its approach to implementing NEPA and other agencies' approaches.

There is one other glaring lack of explanation present in the Agency's IFR: There are unexplained inconsistencies between this Agency's approach to implementing NEPA and approaches adopted by other agencies. While some modest difference for administrative efficiencies and the Agency's unique missions is warranted, these distinctions transcend such purposes and get to the core issues that should be consistent across agencies.

To take one example, the Agency has elected to use a non-codified handbook to implement NEPA. Yet, other agencies continue to codify some or all of their regulations. *See*, *e.g.*, 90 Fed. Reg. 29465 (Army Corps). Every Agency may want "the flexibility to respond to new developments," *e.g.*, 90 Fed. Reg. at 29500, and yet certain agencies have maintained their regulations in codified form. Indeed, the Agency recognizes that having codified regulations is important to "avoid any confusion." 90 Fed. Reg. at 29499. If some agencies can do it, why can't this Agency? The Agency doesn't say.

Another key distinction is whether agencies may, or must, provide the public an opportunity to comment on draft EISs. Indeed, the Agency does not require issuance of a draft EIS, raising the possibility that a core feature of NEPA will be circumvented at the discretion of the Agency. Yet other agencies still mandate the preparation of a draft EIS. FERC Staff Guidance Manual (C)(1)(d). If other agencies can mandate these features in their NEPA process, why has this Agency omitted it? It does not say.

IV. The IFR Unlawfully And Arbitrarily Weakens The Public's Role In NEPA's Implementation.

Public participation in the NEPA process, "in cooperation" with the government, has been central to the execution of NEPA since its inception. 42 U.S.C. 4331(a). By its very text, NEPA requires public participation in the processes it creates. But the Agency has reshaped the process in a way that weakens or eliminates the guarantee of public participation that is at the heart of the statute. Not only does this violate both the letter and spirit of NEPA itself, but the Agency's failure to explain its reasoning for this drastic change is arbitrary and unlawful. The Agency has indicated, without explanation, that it intends to pull back on public participation that has long been a guaranteed part of NEPA review, including during the process of developing an EIS. The Agency should ensure that public participation—through comment on scoping, draft EISs, and other NEPA documents—remains a core part of the process.

A. Seeking out and considering public input on NEPA documents represents the very core of NEPA.

The Supreme Court has long recognized the centrality of public participation in NEPA. The Court has noted that NEPA guarantees that "relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision." *Robertson*, 490 U.S. at 349. In this way, it's not enough to simply publish an environmental document that the public may passively review. "Publication of an EIS, both in draft and final form . . . serves a larger informational role." *Id.* It gives the public "assurance that the agency has indeed considered environmental concerns in its decisionmaking process" and "*more significantly*, provides a springboard for public comment." *Id.* (emphasis added) (citations omitted); *see also Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (EIS designed to "provide a springboard for public comment" (citation modified)). Allowing the public to participate early on addresses NEPA's "manifest concern with preventing uninformed action," because it is through the "broad dissemination of information" that "the public" can "react to the effects of a proposed action at a meaningful time." *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989). Such disclosure allows the public to meaningfully participate in NEPA, as Congress intended. To strip this mandate from NEPA would be "incongruous with [NEPA's] approach to environmental protection." *Marsh*, 490 U.S. at 371.

The Courts of Appeals have reached the same conclusion. For example, the Second Circuit held that NEPA required "an environmental full disclosure" so that the public could

"weigh a project's benefits against its environmental costs." *Sierra Club v. U.S. Army Corps of Eng'rs*, 772 F.2d 1043, 1049 (2d Cir. 1985). Allowing the public to weigh costs against benefits is meaningless if the public cannot provide comments to the relevant agencies with that weighing in mind. Rather, an agency must invite comment, and respond; doing so "insures the integrity of the agency process by forcing it to face those stubborn, difficult-to-answer objections without ignoring them or sweeping them under the rug." *Id.* Likewise, the Ninth Circuit has recognized the "crucial role" that public engagement plays in "realizing NEPA's policy goals." *Prutehi Litekyan: Save Ritidian v. U.S. Dep't of Airforce*, 128 F.4th 1089, 1101 (9th Cir. 2025). Both public notice and the public participation it supports "are at the heart of the NEPA review process." *California v. Block*, 690 F.2d 753, 770 (9th Cir. 1982). This emphasis on public participation reflects the "paramount Congressional desire to internalize opposing viewpoints into the decision-making process" before an agency arrives at a final decision. *Id.* at 771. To that end, it is not enough to provide "public notice," because NEPA requires "public participation in the evaluation of the environmental consequences of a major federal action." *Id.*

B. Data demonstrates that public input improves government decisionmaking.

Beyond its centrality to the purpose and function of NEPA, it is well-demonstrated that public participation in the NEPA process improves the quality of agency action. A recent empirical study of 108 EISs over a period of 22 years indicates that public comment influences agency decision making and provides valuable information for agencies. *See* Ashley Stava et. al, *Quantifying the Substantive Influence of Public Comment on United States Federal Environmental Decisions Under NEPA*, 20 Env't Rsch. Letters, Jun. 10, 2025, at 1. Public comments submitted under NEPA procedures were linked to substantive decision alterations in 62% of cases. *Id.* Federal agencies credited changes in project alternatives to public comments in nearly 90% of cases. *Id.* And where mitigation plans were modified, agencies credited the public comment process 100% of the time. *Id.*

The data, and consistent behavior of agencies across various administrations and over two decades, shows the value of public comment in the NEPA process. Agencies modify their actions in response to public participation because public participation is *valuable*. *Cf.* Admin. Conf. of the U.S., *Public Participation in Agency Adjudication (Final Report)* 6 (2025) ("[Agencies]" frequently need information from regulated entities, regulatory beneficiaries, unaffiliated experts, and citizens with situated knowledge to fully understand regulatory problems and potential solutions, to make fully informed decisions."). Removing the public's ability to participate in the NEPA process will certainly reduce the quality of future agency action because it will cut off a supply of valuable perspectives, critiques, and insights that agencies do not have the capacity to investigate themselves. *Cf.* Admin. Conf. of the U.S., *Public Engagement in Rulemaking (Final Report)* 1 (2019) ("Robust public participation is vital to the rulemaking process. By providing opportunities for public input and dialogue, agencies can obtain more comprehensive information, enhance the legitimacy and accountability of their decisions, and increase public support for their rules.").

Substantial evidence demonstrates that public participation "improves the substantive quality, legitimacy, and accountability of environmental assessments and decisions," in addition to fulfilling "norms of popular sovereignty." Nat'l Rsch. Council, *Public Participation in Environmental Assessment and Decision Making* 226 (Thomas Dietz & Paul C. Stern eds., 2008). Public participation in the NEPA process "at the outset ensures a more productive and efficient outcome." United States Env't Prot. Agency, *Better Decisions Through Consultation and Collaboration* 2 (2008); *see also* Nat'l Rsch. Council, *supra*, at 51 ("[P]articipation increases public understanding of science and scientists' and agency officials' understanding of public concerns, thus enabling future participatory processes to proceed more efficiently.").

C. Public participation has long been central to agency NEPA procedures.

Of course, prior to now, the federal government has long recognized the value, and necessity, of public participation in the NEPA process. CEQ's 1978 implementing regulations announced the centrality of public participation to NEPA. CEQ's implementing regulations were crafted to "tell federal agencies what they must do to comply with the procedures and achieve the goals of [NEPA]." *National Environmental Policy Act—Regulations*, 43 Fed. Reg. 55978, 55990 (Nov. 29, 1978). As such, CEQ's 1978 regulations highlighted that, among other things, "public scrutiny [is] essential to implementing NEPA." *Id.* Recognizing that NEPA was designed to make "better decisions" and "not better documents," CEQ's initial policy statement directed federal agencies to "encourage and facilitate public involvement in decisions which affect the quality of the human environment" to the fullest extent possible. *Id.* at 55991.

This public involvement in NEPA procedures must entail information sharing *and* public input to agencies if it is to help create "better decisions." To fulfill this requirement, CEQ mandated that when drafting an EIS an agency must "[r]equest comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected." *Id.* at 55998. This public involvement in the EIS process was not one-sided: an agency was required to "assess and consider comments both individually and collectively" and "respond," ensuring that public participation in the NEPA process was not just aesthetic, but in fact substantial. *Id.* Elsewhere, CEQ made clear that where public participation is concerned, agencies have an affirmative duty to "[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures." *Id.* at 56001. This language highlights the intent that NEPA foster cooperation between the government and the public through public participation—as highlighted in NEPA itself. *See* 42 U.S.C. 4331(a). To facilitate these efforts, CEQ required agencies to "solicit appropriate information from the public," solidifying the understanding that NEPA affirmatively demands public participation. 43 Fed. Reg. at 56001.

This emphasis on public comment and input continued even during periods when administrations sought to streamline NEPA processes. In its 2020 overhaul of its regulations, for instance, which significantly weakened NEPA's reach in ways we and other organizations explained were unlawful, CEQ nonetheless focused on maintaining public access to agencies by

increasing agency flexibility in doing public outreach. *Update to the Regulations Implementing the Procedural Provisions of NEPA*, 85 Fed. Reg. 43304, 43337 (July 16, 2020); *see also id.* at 43356 ("The final rule expands the already wide range of tools agencies may use when providing notice to potentially affected communities and inviting public involvement."). CEQ's manifest concern was for maximizing the ability of the public to participate in NEPA proceedings. *See, e.g.*, *id.* at 43371 ("When selecting appropriate methods for public involvement, agencies shall consider the ability of affected entities to access electronic media."). To that end, CEQ required agencies to "provide for agency websites or other means to make available . . . relevant information for use by agencies, applicants, and interested persons." *Id.* at 43374. CEQ's focus on facilitating public participation confirms its importance in NEPA's procedural scheme.

Similarly, in its 2024 revisions to the NEPA implementing regulations CEQ repeatedly stressed its interest in ensuring "full and fair public participation [in NEPA procedures] and a process that informs the public about the potential environmental effects of agency actions." 89 Fed. Reg. at 35447. CEQ sought to increase the ability of the public to participate in NEPA procedures, recognizing the value and necessity of such participation. *See, e.g.*, *id.* at 35476 (expanding public comment requirements for EAs in order "to reflect current agency practice and provide the public with a clearer understanding about potential public participation opportunities"). In the end, the 2024 regulations included multiple provisions on notice and comment on EISs, 40 C.F.R. §§ 1503.1–1503.4; *see also* 40 C.F.R. § 1501.5(e) (comment on environmental assessments). While the CEQ implementing regulations have been revoked, the fact that public participation in the NEPA process was mandated for over fifty years—across a spectrum of changing administrative goals and ideologies—demonstrates the value and importance of public participation in NEPA and highlights the importance of agency-specific rules and procedures that accomplish this key objective.

D. Congress has accepted that public input is crucial to NEPA's implementation.

While the statute itself contains relatively little explicit direction on public comment and input, the fact that Congress acquiesced to CEQ and the Court's long-standing interpretation of NEPA confirms that it is in fact statutorily mandated. "[C]ongressional acquiescence" to a practice or interpretation of an administrative agency indicates its approval under two conditions: the practice must be "long-standing," *Rice v. Wilcox*, 630 F.2d 586, 590 (8th Cir. 1980); *cf. NLRB v. Noel Canning*, 573 U.S. 513, 524–25 (2014) (explaining that "long settled and established practice is a consideration of great weight" in ascertaining whether the coordinate branches have respected the separation of powers), and the circumstances must illustrate Congress's "extensive awareness" of the interpretation or action to which it has allegedly acquiesced. *Schism v. United States*, 316 F.3d 1259, 1289, 1295–96 (Fed. Cir. 2002); *Bob Jones Univ. v. United States*, 461 U.S. 574, 599 (1983).

An "unusually strong" showing of Congressional acquiescence can be made when Congress considers and rejects alternative proposals and when its enactments reference or take

for granted the agency practice. *See Schism*, 316 F.3d at 1259 (quoting *Bob Jones*, 461 U.S. at 599); *see also Bob Jones*, 461 U.S. at 600–01 (referencing Congressional hearings "on th[e] precise issue" making Congress's "non-action . . . significant"); *Dames & Moore v. Regan*, 453 U.S. 654, 678–60 (1981) ("By creating a procedure to implement" claims settlement by executive agreement, Congress "implicitly" "placed its stamp of approval on such agreements."); *Five Lakes Outing Club v. United States*, 468 F.2d 443, 446 (8th Cir. 1972) (procedure long employed by Commissioner had gained court approval, and was "acquiesced in by Congress" before "expressly incorporated into the Code"); *Farmers Coop. Co. v. Comm'r of Internal Revenue*, 288 F.2d 315, 323–24 (8th Cir. 1961) ("over forty years" of "rulings and administrative practices" followed by congressional action "at least impliedly approved" that interpretation).

Congress has shown longstanding, extensive awareness of CEQ's NEPA regulations and authority and has at least implicitly agreed that they constitute appropriate interpretations of the statute. Indeed, in a few places, Congress done even more, directly incorporating CEQ's regulations by reference in many places. *See, e.g.*, 33 U.S.C. § 2348a(a) (defining categorical exclusion, environmental assessment, and finding of no significant impact with reference to CEQ's implementing regulations); 23 U.S.C. § 139(d)(5) (defining a cooperating agency with reference to CEQ's implementing regulations); 16 U.S.C. § 6511(7)(C) (defining a decision document with reference to applicable CEQ regulations). Congress has also legislated against the backdrop of CEQ's NEPA regulations many times, such as with the recent Fiscal Responsibility Act, through which Congress enacted the first major statutory changes to NEPA in fifty years. *See* Pub. L. No. 118-5, 137 Stat. 10 (June 3, 2023). That legislation clarified certain procedural aspects of NEPA's implementation, incorporating some of CEQ's prior regulations into statutory text, without any indication that Congress looked askance at CEQ's interpretations of NEPA's requirements to seek out and consider public input on NEPA documents. Other examples include requiring agencies to comply with the regulations for specific projects or exempting agencies from the regulatory requirements altogether. *See, e.g.*, Building Chips in America Act of 2023, Pub. L. 118-105, 138 Stat. 1587 (Oct. 2, 2024).

All of this illustrates that Congress has accepted that the longstanding CEQ regulations reflect the appropriate interpretation of NEPA as a general matter. There is even more evidence that Congress has accepted CEQ's public participation requirements. Congress has directly legislated against the backdrop of CEQ's public participation requirements. Through the Fixing America's Surface Transportation Act ("FAST Act"), Pub. L. No. 114-94, 129 Stat. 1312 (Dec. 4, 2015), Congress, in part, streamlined the review process for certain federal infrastructure projects. For example, Congress expressly required agencies to establish public comment periods of 45 to 60 days for all draft EISs, and public comment periods not exceeding 45 days for all other environmental review and comment periods. 42 U.S.C. § 4370m-4(d)(1)–(2). But even though streamlining was the goal, these provisions still took for granted that public comment periods were *required* under NEPA: a statutory minimum indicates that public comment periods are not optional. The 45-day minimum it legislated came from CEQ's rules. 85 Fed. Reg. at

43372 ("[A]gencies shall allow at least 45 days for comments on draft statements."). By legislating in this way, Congress confirmed the necessity of public participation to NEPA.

E. NEPA requires agencies to respond to public comment.

Finally, it is not enough to allow the public to comment. The law is clear that agencies must also respond. Under the APA, agencies are required to "adequately explain [their] result and respond to relevant and significant public comments." *Pub. Citizen, Inc. v. F.A.A.*, 988 F.2d 186, 197 (D.C. Cir. 1993) (citation modified); *see also W. Coal Traffic League v. Surface Transp. Bd.*, 998 F.3d 945, 954 (D.C. Cir. 2021) ("[F]ailure to respond to significant comments . . . violates a substantive guarantee of the APA."); *Ohio v. EPA*, 603 U.S. 279, 293–94 (2024) (finding EPA was likely to have acted arbitrarily and capriciously because it failed to respond to concerns raised in the notice and comment period). Failure to respond to public comments "generally demonstrates that the agency's decision was not based on a consideration of relevant factors." *Liliputian Sys., Inc. v. Pipeline and Hazardous Materials Safety Admin.*, 741 F.3d 1309, 1312 (D.C. Cir. 2014) (citation modified). Indeed, these principles apply with equal force when an agency engages in the NEPA process. *See Block*, 690 F.2d at 773. Agencies are "obliged to provide a meaningful reference to all responsible opposing viewpoints concerning the agency's proposed decision." *Id.* (citation modified). Agencies must produce "good faith, reasoned analysis in response" to public comments. *Id.*

F. The Agency's new approach is unlawful because it is contrary to statute and unexplained.

All of this long history and well-established understanding of NEPA has been eviscerated by the Agency. No longer is there any requirement to seek out and consider public comment. Indeed, it appears that issuance of a draft EIS and consideration of public comment is now optional. By cutting the public out of NEPA review, agencies are undermining the very purpose of NEPA, in direct contradiction of Congressional, Judicial, Administrative, and public understanding of the role the American people play in safeguarding the environment at the federal level.

The Agency's choice is not only contrary to statute, but it also has failed to explain why it has made this dramatic shift. A recent Ninth Circuit decision illustrates precisely why the Agency's new procedures are arbitrary and capricious and inconsistent with NEPA. In *Montana Wildlife Federation v. Haaland*, 127 F.4th 1 (9th Cir. 2025), the court considered a challenge to a BLM policy that reduced the comment period for oil and gas lease sales from 30 days to only ten days, and eliminated any public participation for determinations of NEPA adequacy. The court ruled that the change was arbitrary and capricious because:

> the justification offered for a change in policy . . . cannot be inconsistent with the purpose of the requirement being implemented. Here, the agency's decision to prioritize administrative efficiency and expedition of oil and gas production over deliberative decision-making that takes into account informed public

> comments is in direct tension with NEPA's goal of informing the public and facilitating public participation. . . . By curtailing the opportunities available for public input in land management decisions for the sole purpose of more expeditious offerings of oil and gas leaseholds, the agency 'entirely failed to consider an important aspect of the problem,' one embedded in NEPA.

Id. at 39 (citation modified). The court also held that the change was inconsistent with NEPA, holding that "whether the agency's new policy is permissible under the statute" as interpreted by longstanding regulations and practice "is also doubtful when considered in the context of [BLM's] earlier policy." *Id.* at 39–40.

The same is true here: The Agency's gutting of public participation in the NEPA process fails to consider the law's goal of facilitating public information and participation. And the Agency's long-standing practice of providing public participation opportunities under NEPA underscore how inconsistent with the statute the new procedures are.[4]

Of course, the Agency may point to provisions in the statute and its NEPA process that call for comment at the notice of intent stage. But this is wildly insufficient. At that stage, there is usually little or no detailed information about the proposed action, its potential impacts, and the range of potential alternative for the public to comment on. While we agree that comment on a notice of intent is valuable, it is no substitute for participation in scoping proceedings, let alone comment at the draft EIS stage, when the project has been fully fleshed out and the Agency has taken a first look at its potential impacts and alternatives. We urge the Agency to revisit its rules and guidance and in the meantime continue to maximize public engagement and comment in order to comply with NEPA.

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[4] To the extent the Agency applies the new procedures to public lands decisions subject to the Federal Land Policy and Management Act (FLPMA), the elimination of public participation opportunities also violates FLPMA. In *Montana Wildlife Federation*, the court held that the reduction in public comment periods violated 43 U.S.C. § 1739(e), which requires "that the government establish procedures to provide the public with opportunities 'to participate in, the preparation and *execution* of plans and programs for, *and the management of,* the public lands." 127 F.4th at 40–41 (quoting 43 U.S.C. § 1739(e)); *see also Nat'l Wildlife Fed'n v. Burford*, 835 F.2d 305, 322–23 (D.C. Cir. 1987); 43 U.S.C. § 1701(a)(5) (declaring congressional policy that Interior "consider[ ] the views of the general public," and "structure adjudication procedures to assure adequate third party participation"). It also violates the Surface Mining Control and Reclamation Act (SMCRA), which requires public participation throughout all agency decision-making processes. 30 U.S.C. § 1202(i) (stating statutory purpose to "assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this chapter").

V. Executive Order 14154 Does Not Justify The Approach Taken By The IFR.

The Agency has explained that its revisions rely on President Trump's Executive Order 14154. 90 Fed. Reg. at 29500–01 ("E.O. directs all agencies to prioritize efficiency and certainty over any other objectives and avoid any minimize delays and ambiguity in the permitting process"). That executive order provides that "[c]onsistent with applicable law," the Agency should "prioritize efficiency and certainty over any other objectives, including those of activist groups, that do not align with the policy goals set forth in section 2 of [that] order or that could otherwise add delays and ambiguity to the permitting process." Executive Order 14154, § 5(c) (Jan. 20, 2025).]

Section 2, in turn, emphasizes policy goals like "encourag[ing] energy exploration and production," Executive Order 14154, § 2(a), "establish[ing] our position as the leading producer and processor of non-fuel minerals," § 2(b), "protect[ing] the United States's economic and national security and military preparedness," § 2(c), and "promot[ing] true consumer choice,"§ 2(e); *see also* § 2(f). There are two problems with the Agency's reliance on this executive order to justify its new NEPA processes: (1) The executive order is inconsistent with NEPA's requirements; and (2) the procedures implemented by the Agency fail to satisfy the executive order on its own terms.

A. Executive Order 14154 is inconsistent with NEPA.

A NEPA process that seeks to achieve "efficiency and certainty over any other objective" and aims to implement only the policy goals enumerated in section 2 of the executive order are fundamentally inconsistent with NEPA. While efficiency and more assurances as to outcomes are worthy objectives, the statute does not allow them to be prioritized over the protection of human and environmental health, as the executive order demands.

NEPA, not the executive order, declares the relevant policy of the federal government. It serves to "declare a national policy which will encourage productive and enjoyable harmony between man and his environment," 42 U.S.C. § 4321, and it establishes that the "continuing policy of the Federal Government" is to "use all practicable means and measures . . . to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans," 42 U.S.C. § 4331(a). The whole of the "Federal Government" thus must "use all practicable means . . . to improve and coordinate Federal plans, functions, programs, and resources" to various "end[s]," including, among others, "assur[ing] for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings," and "preserv[ing] important historic, cultural, and natural aspects of our national heritage." 42 U.S.C. § 4331(b). Accordingly, if the Agency took the executive order to allow it to disregard these policies and goals, its NEPA revisions cannot stand.

Indeed, to the extent NEPA gestures at any of the goals embraced by section 2 of the executive order, it reflects a need to balance those ends with other goals. *See* 42 U.S.C.

§ 4331(b)(3) ("attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences"); § 4332(b)(4) (balancing "maintain[ing]" "variety of individual choice" with the need to "preserve important historic, cultural, and natural aspects of our national heritage"); § 4332(b)(5) ("achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities"). There is no statutory support for considering "efficiency and certainty," or the policy goals enumerated in section 2, to the exclusion of all other aims—especially the ones called out in the statute itself, including NEPA's express purpose of environmental protection, *see* 42 U.S.C. § 4321.

The statute also confirms the marching orders the "agencies of the Federal Government" must follow. *See* 42 U.S.C. § 4332(B). Agencies are not directed to prioritize "efficiency and certainty" or to pursue the specific aims discussed in section 2 of the executive order above all else. Rather, "[a]ll agencies of the Federal Government" have long been required to be in "full compliance with the purposes and provisions of this chapter," including those just discussed. 42 U.S.C. § 4333. They must "identify and develop methods and procedures . . . which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations." 42 U.S.C. § 4332(B).

The Agency's adherence to this executive order, rather than NEPA's statutory text, also places it on the wrong side of Supreme Court precedent. While agencies are "not constrained by NEPA from deciding that other values outweigh the environmental costs," they must ensure that they have followed "the necessary process," which in turn includes ensuring that "adverse environmental effects of the proposed action are adequately identified and evaluated." *Robertson*, 490 U.S. at 350. It is through NEPA's public-facing procedures—not a process that seeks efficiency and certainty over all else—that the "sweeping policy goals" found in § 4331 are implemented. *Id.* To that end, the "twin aims" of NEPA are an "obligation to consider every significant aspect of the environmental impact of a proposed action" and "ensur[ing] that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process." *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983) (citation modified). The goal of "[a]dministrative efficiency and consistency of decision" should give way if NEPA's requirements are not otherwise met. *See id.* at 101.

In short, NEPA identifies the policy goals it intends agencies to pursue in promulgating regulations implementing it, and they are not those goals that agencies have elected to pursue by relying on Executive Order 14154. The Agency should reconsider its NEPA implementation decisions for that reason alone.

B. The NEPA process the Agency adopted does not achieve the efficiency and certainty goals of the executive order, in any event.

In any event, as evidenced further in these comments, the Agency has failed to implement the President's command.

To start, among the policies enumerated in the executive order is a "guarantee that all executive departments and agencies (agencies) provide opportunity for public comment and rigorous, peer-reviewed scientific analysis." Executive Order 14154, § 2(h). But these NEPA rules provide no guarantee of such public comment. The Agency has declined to require public comment when it establishes or revises any categorical exclusion. 90 Fed. Reg. at 29506 (43 C.F.R. § 46.205(h)). When it does engage in environmental review, it has declined to guarantee public comment where the Agency determines that a categorical exclusion applies, or where the Agency uses an environmental assessment. *See generally* 90 Fed. Reg. at 29505–06 (43 C.F.R. § 46.205) (categorical exclusions); DOI Handbook § 1.5; DOI Handbook, app. 3, at 2–3 And the Agency has curtailed the level of public involvement in the environmental impact statement process, requiring comment only at the notice of intent stage while omitting the guarantee of public participation on any draft environmental impact statement. DOI Handbook §§ 2.1, 3.3; *see also id.* § 1.8.[5] Accordingly, the Agency's approach to NEPA review fails to the Executive Order by its own terms.

Moreover, these choices, and others, have undermined "efficiency and certainty" and will produce "delay and ambiguity" in the permitting process. Executive Order 14154, § 5(c). There is ambiguity and uncertainty about when, exactly these new rules will start to apply. Notwithstanding the Agency's insistence that it proceed by interim final rule, the Agency also has indicated that the "revised agency procedures will have no effect on ongoing NEPA reviews" where the old rules still will apply. 90 Fed. Reg. at 29500 ("[R]evised agency procedures will have no effect on ongoing NEPA reviews . . . ."). So, it's a mystery about what rule is going to apply to any given NEPA review.

That confusion about what set of rules apply is not likely to end soon, where the Agency has claimed it is proceeding with non-codified, "flexible" guidance. Indeed, the Agency justified its decision by citing to the executive order's requirement of certainty in one breath, 90 Fed. Reg. at 29500, only to have embraced the opposite of certainty—"non-codified procedures"—in another. 90 Fed. Reg. at 29500. In other words, the Agency has found the perfect recipe for uncertainty and ambiguity.

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[5] The Agency appears to have retained a scoping process. DOI Handbook § 1.8(c). To the extent this process is meant to be discretionary, we urge the Agency to require it. And to the extent aspects of public participation in scoping are discretion, we urge the Agency to make public participation mandatory.

There is nothing efficient about different components of the federal government, the public, and project proponents having to navigate a complex web of ever-changing rules that vary from agency to agency. There is a reason that CEQ is meant to "formulate and recommend national policies to promote the improvement of the quality of the environment." 42 U.S.C. § 4342. CEQ could draw on the experience of all of government to develop best practices, and it could at least recommend a consistent set of practices that would produce those results. One of the primary drivers of the government establishing consistent, uniform regulations across the federal government in the first place was to address the ways "inconsistent government-wide practices" had "impeded Federal coordination and made it more difficult for those outside government to understand and participate in the environmental review process." 43 Fed. Reg. at 55978. It was that difficulty that "caused unnecessary duplication, delay and paperwork." *Id.* Where each agency, including this one, has elected to go it alone, compliance with NEPA will be less efficient. With CEQ's regulations rescinded and no assurance that agencies are following a common set of principles, all involved will have to account for differences across agency NEPA review processes. Where agencies have said they might change those processes at a moment's notice, they will have to update that accounting frequently. In other words, this Agency—along with others—have recreated problems that the government solved nearly 50 years ago.

The substance of the Agency's particular NEPA rules further demonstrates it has embraced an ambiguous approach. Underscoring that the governing rules are subject to change, it has made clear that even the universe of available categorical exclusions remains fluid: Even if no currently available categorical exclusion would cover a proposed action, the Agency will consider whether "the proposed action warrants the establish of a new categorical exclusion, or the revision of an existing categorical exclusion." DOI Handbook § 1.2(a)(2). And in other areas, the Agency has elected not to provide clear, substantive criteria that will inform the public, project proponents, or other components of the federal government. For example, it may, but is not required to, consider certain environmental effects. DOI Handbook § 1.5(d)(3); DOI Handbook § 2.3(b)(3). On the key question of whether effects are significant, these materials provide little guidance because "[w]hether an impact rises to the level of 'significant' is a matter of the [agency's] expert judgment." DOI Handbook § 2.1(a). Expert judgment or discretion is the guiding principle in a number of areas, including the selection of alternatives, DOI Handbook §§ 2.3(a)(3), 4.1; *see also id*., app 3, at 12, what issues are addressed, DOI Handbook § 1.5(d)(3); DOI Handbook § 2.3(b)(3), whether an action is a "major Federal Action" in the first place, DOI Handbook § 1.1(a)(6)(i), or whether to supplement and EIS, DOI Handbook § 3.6(a). The Agency has not explained the basis for all this newfound discretion, and it's an approach that amplifies the risk of inconsistent environmental review that NEPA was meant to address.

In the past, public comment—and the Agency's response to those comments—could be relied on to shape an Agency's analysis. But there is uncertainty about the level of public involvement the Agency will choose. It may, but is not required to, "request" comments from the "public" during "the process of preparing an environmental impact statement." DOI Handbook

§ 2.1(b)(ii). There's also uncertainty about whether the agency will address all comments in writing, where it has committed to address only comments it views as "substantive." DOI Handbook § 2.1(d). So, there is uncertainty about whether the Agency will accept comment, and, if it does, whether it will respond.

In short, no one will know what NEPA review will look like for any given project, and given the possibility that the Agency will not fully respond to comments, there will be uncertainty about what the Agency actually considered. And there will be no way to rely on what an Agency has done in the past to inform what material might be useful to the Agency going forward. Where discretion and flexibility is the guiding principle, the Agency may be left to start from scratch whenever they encounter a new proposal.

Finally, there is yet another efficiency cost of the Agency electing to proceed without public involvement. As discussed above, public involvement *helps* the Agency identify the relevant universe of environmental effects and alternatives, potential mitigation options, and other information the Agency would be expected to evaluate. Public involvement surfaces "reliable data source[s]" necessary for evaluating environmental impacts, 42 U.S.C. § 4336(b)(3), so that the Agency does not have to locate that material all by itself. And experience shows that engaging the public and listening to their concerns reduces controversy and boosts the likelihood that projects will be timely permitted and built. Public involvement saves agencies' time while producing better environmental reviews.

In other words, whatever time savings might be gained by cutting corners in the environmental review process will be overcome by the time lost to inefficiencies, uncertainties, and controversies resulting from the new rules. To be sure, the Agency has in places retained its discretion to do more than the bare minimum. But this just reinforces the point that the goals of certainty and efficiency are better served by having a consistent and predictable set of rules that project proponents and the public, and the Agency itself, know up front will apply.

Moreover, the data reflects that the need for time savings is overstated. Recent data showed that, in the wake of the 2023 amendments and the regulatory reforms of the previous administration, the trend towards longer and longer EIS and EA timelines had been reversed. For example, in a 2025 Report, CEQ found that federal agencies "benefitted from recent statutory, regulatory, and executive reforms to the NEPA process and significant cross-government investments to expedite permitting processes." CEQ, Environmental Impact Statement Timelines (2010-2024), at 1 (Jan. 13, 2025). Progress is also documented in a 2024 fact sheet that explained how thoughtful reforms and investments accelerated the timeline for project permitting. White House, Fact Sheet: Biden-Harris Administration Takes Action to Deliver More Projects More Quickly, Accelerates Federal Permitting (Aug. 29, 2024).[6] Rather than rush to gut NEPA

[6] https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/08/29/fact-sheet-biden-harris-administration-takes-action-to-deliver-more-projects-more-quickly-accelerates-federal-permitting/ (last visited July 30, 2025).

altogether, the administration should have given these reforms time to work. At a minimum, the Agency should explain its reasoning for its action in light of this documented success.

In the end, these skipped steps in the environmental review will contribute to yet another kind of delay and uncertainty. There will be serious questions about whether the Agency's NEPA decisions will withstand judicial scrutiny. If an agency has failed to "address[] environmental consequences and feasible alternatives as to the relevant project," it casts doubt on whether the Agency's decision is "reasonably explained." *Seven County*, 145 S. Ct. at 1511. Granted, the Agency enjoys some discretion about what to do with "new potential information" it receives, in terms of "determin[ing] whether and to what extent" to address that information. *Id.* at 1512 (quoting *Pub. Citizen*, 541 U.S. at 767). But there is no refuge for an agency that creates processes that allow it to "entirely fail[] to consider an important aspect of the problem" or "articulate a satisfactory explanation for its action." *State Farm*, 463 U.S. at 43. Indeed, now, just as before, NEPA cannot be implemented to allow an agency to "act on incomplete information, only to regret its decision after it is too late to correct." *Marsh*, 490 U.S. at 371. Because the Agency gives NEPA's processes short shrift, project proponents will have less certainty, not more, that their projects can go forward, and there will be an increased likelihood of delay resulting from an agency needing to redo an inadequate environmental review. That benefits no one.

For all these reasons, the Agency should reevaluate its decision to eliminate many of the features of the existing regulations that ensured efficiency and certainty in their NEPA reviews.

VI. The Agency Should Not Rely On "Non-codified" Procedures To Implement NEPA.

The Agency has made the decision to forego certain codified regulations governing its environmental review. This will be the first time since 1979—when CEQ's regulations first went into effect—that its NEPA reviews will not be governed by codified regulation. Instead, the Agency is purporting to use a non-codified handbook that it contends can be changed at any time. 90 Fed. Reg. at 29500.

There is no indication that Congress intended that agencies could operate without any implementing legislative regulations. *See* 42 U.S.C. §§ 4332(B); 4333. And more fundamentally, the government has already tried, and rejected, an approach where agencies tried to apply NEPA without the use of consistent, codified standards. Before CEQ first promulgated regulations in 1978, there were guidelines providing for "non-discretionary standards for agency decision-making." 43 Fed. Reg. at 55978. The predictable "result" was "an evolution of inconsistent agency practices and interpretations of the law." *Id*. The lack of "a uniform, government-wide approach to implementing NEPA . . . impeded Federal coordination and made it more difficult for those outside government to understand and participate in the environmental review process." *Id.*

With the decision to rescind CEQ's uniform guidance and proceed with separate standards for each agency, some amount of inconsistency and confusion may be inevitable. But agencies should not add to the problem by embracing the use of ever-changing guidance of their own, rather than fixed legislative regulations. That will compound the problem of inconsistent review across the federal government, and it will open the door to inconsistent review within any given agency.

As discussed above, there are efficiency and certainty costs of using guidance that is subject to change at any moment. It simply is not true that "visibility" to the public, which can be achieved by "posting these procedures online," is the only "upside of codification." 90 Fed. Reg. at 29500. Indeed, the Agency has elsewhere recognized the problem with proceeding in this way, explaining that it was important to "retain" certain provisions in a codified way to "avoid any confusion" and "instability." *E.g.*, 90 Fed. Reg. at 29499; *see also Procedures for Implementing NEPA; Removal*, 90 Fed. Reg. 29461, 29463 (July 3, 2025). That same risk of "confusion" and "instability" will be present for any non-codified guidance premised on the ability to change the rules at any time.

To be sure, some Federal agencies have used non-codified procedures "for decades." 90 Fed. Reg. at 29499. But, as explained, it has been decades since any federal agency has done so without the stable backdrop of the CEQ regulations—regulations that had remained largely unchanged from 1979 to 2020. Agency-specific regulations generally served to fill a few relatively modest gaps in the CEQ regulations and tailor them for the agency's specific needs. But now they constitute the entirety of the standards that the Agency is to apply, raising the stakes considerably.

In any event, the claimed benefits of this non-codified approach are illusory. The supposed benefit of using non-codified guidance is that it gives the Agency "flexibility to respond to new developments in this fast-evolving area of law." 90 Fed. Reg. at 29500. This claimed benefit operates from the flawed premise that agencies are free to revise their guidance at a moment's notice, without engaging in notice-and-comment. If the Agency is wrong about that (and it is, *see* above), then this benefit falls away. The other premise of this claim—that this is somehow a fast-evolving area of the law—is unsupported and unsupportable. The need to respond to the "new developments," 90 Fed. Reg. at 29500, cannot alone justify declining to comply with statutory obligations of NEPA or the APA, nor would it let the Agency off the hook from balancing those needs with the consistency, transparency, and efficiency values just discussed.

There's also no reason to suspect there will be a flood of future court decisions requiring wholesale rewrites of an agency's NEPA review process. *Seven County* certainly does not suggest there will be some need to "rapidly update . . . procedures in response to future court decisions." 90 Fed. Reg. at 29500. To the extent that decision required any "course correction of sorts," it was not for the executive branch, but for courts, "some" of which "ha[d] assumed an

aggressive role in policing agency compliance with NEPA." *See Seven County*, 145 S. Ct. at 1511, 1514. It makes no sense to read that decision as calling for changing—let alone abandoning—the longstanding regulatory approach embodied in CEQ's regulations. The validity of CEQ's regulations was not before the Court. To the contrary, the Court held that the agency's application of those regulations produced a decision that warranted deference because the agency's "approach complied with NEPA and this Court's longstanding NEPA precedents." *See id.* at 1511, 1515. Indeed, the Court affirmed one component of CEQ's regulations—that "indirect effects can sometimes fall within NEPA," *id.* at 1515—that this Agency has left on the cutting room floor. There is nothing in the decision to suggest that it invites the executive branch to revisit CEQ's regulations, or even that the Court would approve of the approach to environmental review—an approach that removes process that ensured "the agency has addressed environmental consequences and feasible alternatives," *id.* at 1511—that the Agency has adopted here.

VII. The Agency Adopted Impermissible Threshold Limitations On When NEPA Applies.

NEPA specifies four "threshold" circumstances where an "agency is not required to prepare an environmental document with respect to a proposed agency action." 42 U.S.C. § 4336(a). The Agency has attempted to inject two additional restrictions as threshold issues. The Agency should revisit its approach to these requirements.

A. The Agency should revisit its approach to the major Federal action requirement.

The Agency has explained that NEPA review is not required where "[t]he proposed action is not a 'major Federal action,'" where the "terms 'major' and 'Federal action' each have independent force." DOI Handbook § 1.1(a)(6)(i).

The Agency does not explain why adding such a statement is necessary or appropriate. The earliest cases interpreting NEPA—including those that predated CEQ's regulations—declined to give the "magnitude of the federal action"—that is, the "major" in "major Federal action" much additional bite. *Minn. Pub. Int. Rsch. Grp. v. Butz*, 498 F.2d 1314, 1321 (8th Cir. 1974). When a major Federal action "significantly affect[s] the quality of the human environment," an EIS is required. 42 U.S.C. § 4332(C).

Congress added its own definition of the major Federal action requirement with the recent statutory amendments. 42 U.S.C. § 4336e(10). But that provision did not adopt the Agency's approach. Instead, it provided only that the term "means an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility." 42 U.S.C. § 4336e(10). When CEQ implemented the statutory amendments in the 2024 regulations, it defined the requirement the same way. 40 C.F.R. § 1508.1(w); 89 Fed. Reg. at 35543–48. The Agency has not explained whether this statement is meant to be a change from what came before, and if it is, why such a change is necessary or even advisable.

The Agency otherwise has not offered consistent guidance on what constitutes a major Federal action. The 2024 regulations provided examples of what constitutes "substantial Federal control and responsibility" and what does not. 40 C.F.R. § 1508.1(w). The Agency has provided some guidance about how it might apply this requirement, *see* DOI Handbook § 1.1(a)(6), but by including what could appear to be a narrower threshold to the major Federal Action requirement while omitting the examples CEQ once included, 40 C.F.R. § 1508.1(w)(1), has the Agency indicated that it no longer considers those to be major Federal actions? There is no way to know since there is no explanation offered. There is no need for this confusion, and the Agency should clarify that it continues to consider these actions as qualifying as major Federal actions under the statute.

Ultimately, the Agency eschews any meaningful standards, explaining that such "a determination is bound up in the facts and circumstances of each individual situation and is thus reserved to the judgment of the bureau in each instance," DOI Handbook § 1.1(a)(6). The Agency does not have unlimited discretion to determine what constitutes a major Federal action; where an action constitutes major Federal action within the meaning of the statute, NEPA requires the Agency to go through environmental review, and the statute does not provide offramps except where specified. *See* 42 U.S.C. § 4332(C). And that is true even if the Agency initially exercises its judgment to conclude otherwise. *See, e.g.*, *City of Dania Beach v. FAA*, 485 F.3d 1181, 1189 (D.C. Cir. 2007); *Wild Fish Conservancy v. Thom*, 2021 WL 8445587, at *18 (W.D. Wash. Sept. 27, 2021).

A few additional points bear emphasis. The IFR rescinds the existing regulatory definition of major Federal Action, which tracked the statutory definition focusing solely on federal control. 43 C.F.R. § 46.100 (2024) (implementing 40 C.F.R. § 1508.18 (2023)). Instead, the new Handbook adopts a definition that focuses not only on whether there is "substantial federal control," but also whether the action is "major." DOI Handbook § 1.1(a)(6)(i) ("The terms 'major' and 'federal action' each have independent force. NEPA applies only when both criteria are met. Such a determination is [fact-specific] and is thus reserved to the judgment of the bureau in each instance.")

This new definition appears to allow agencies to exclude many substantial proposals from NEPA. *Id.* ("NEPA does not apply to a proposed action when . . . (6) the proposed action is not a 'major federal action'"). The Handbook provides a "non-exhaustive" list of activities that "presumptively do not meet the definition of" major Federal action. *Id.* § 1.1(a)(6)(iii). This list goes beyond the exclusions listed in the statute and includes: (a) development and approval of a national outer continental shelf leasing program, (b) *all* functions of the Office of Natural Resources Revenue and the Bureau of Trust Funds Administration, including reductions in royalty rates, and (c) decisions to delist species or rescind critical habitat under the Endangered Species Act.

The Handbook also includes a list of actions that will "generally" be considered major. *Id.* § 1.1(a)(6)(i). This list underscores concerns that the new MFA definition may exclude many activities from NEPA analysis. For example, the *only* BLM actions listed are land use plan amendments, revisions or development of new plans, DOI Handbook, app. 1, at 4, ignoring the numerous other actions that have been recognized as requiring NEPA analysis. If Interior applies its Handbook in such a restrictive manner, it will violate NEPA.

Similarly, the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344, requires Interior to develop a National Program that evaluates a wide array of factors—including protection of the environment—to decide whether, where, and how to schedule lease sales on the Outer Continental Shelf (OCS). For forty-five years, Interior has recognized that these National Program decisions about oil and gas exploration, leasing, and development can lead to significant effects for coastal communities, economies, and wildlife. Since the first five-year program was adopted in 1980, Department of the Interior, 5-Year OCS Program 217 (Mar. 6, 1980),[7] Interior has always prepared a programmatic EIS to both inform the public and its own decision-making about the significant environmental effects of offering areas for offshore leasing and to consider alternatives (including scheduling fewer lease sales in fewer areas or other mitigation) to address those effects.

Despite the essential nature of NEPA to this process—and the Department's longstanding practice and interpretation that a programmatic EIS is required at the Program stage—Interior announced, without any explanation, that it no longer considers the development of this Program to be a "major Federal action" that would trigger NEPA. *See* DOI Handbook § 1.1(a)(iii)(C); *see also* DOI Handbook, app. 1, at 5 (§ 15.4). This violates NEPA. *See* 42 U.S.C. § 4332(C).

In 2023, Congress amended NEPA to further clarify the definition of a "major federal action" to include "an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility." Fiscal Responsibility Act of 2023. The National Program is subject to both Interior's substantial control and discretion and Interior is primarily responsible for its development (i.e., not any other government or private actor's responsibility) and solely responsible for its adoption and implementation. The Handbook does not acknowledge or explain how the Program suddenly no longer falls under this definition. The 2023 Amendments also list seven specific exclusions to this definition, but none of them apply here. Interior offers no justification or further explanation for its change in approach.

The 2023 Amendments further clarify that agencies must prepare an "environmental document" for proposed agency actions unless they fall under one of four categories:

(1) the proposed action is not a final agency action;
(2) the action is excluded pursuant to a NEPA categorical exclusion;

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[7] https://www.boem.gov/sites/default/files/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Five_Year_Program/PFP%2080-82.pdf (last visited Aug. 1, 2025).

(3) "the preparation of such document would clearly fundamentally conflict with the requirements of another provision of law."; and
(4) "the proposed agency action is a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action."

42 U.S.C. § 4336(a). None of these exemptions apply to the National Program either. The Program is indisputably a final agency action. It is not subject to a categorical exclusion. DOI Handbook, app. 2, at 5 (§ 15.4). Nor does Interior identify (let alone explain) any provision of law whose requirements fundamentally conflict with the preparation of an environmental document for the five-year program. To the contrary, OCSLA explicitly requires Interior "to take environmental factors into consideration" in developing the program—and the agency has prepared programmatic EISs for every Program it has previously developed. 43 U.S.C. § 1344(a). Finally, OCSLA provides Interior with wide discretion to develop the Program—and specifically requires it to rationally exercise that discretion in evaluating and balancing a broad list of factors to arrive at a leasing schedule that protects the environment while meeting any national energy needs. 43 U.S.C. § 1344.

For 45 years, Interior has recognized the need to prepare a programmatic EIS to inform the significant and long-lasting decisions (often involving hundreds of millions of acres of public waters, millions of people, and some of the nation's most treasured wildlife) that it makes in the National Program. Interior neither recognizes nor offers any reasoning for its abrupt shift in its longstanding practice and policy in the updated Handbook.

B. The Agency should revisit another exclusion from NEPA review.

The new Handbook includes a separate list of actions excluded from NEPA. DOI Handbook § 1.1(a)(4). Much of the list tracks the exclusions provided in the NEPA statute. However, the Handbook does not explain whether its new Handbook adopts a broader view than the statute of when an action is exempt from NEPA as a nondiscretionary action. *Compare* 42 U.S.C. § 4336(a)(4), *with* DOI Handbook § 1.1(a)(4). The statutory exclusion requires that an action be both: (a) "nondiscretionary" and (b) "one for which the "agency does not have authority to take environmental factors into consideration." 42 U.S.C. § 4336(a)(4). The Handbook appears to drop the first element and rephrases the second element to include statutes that "prescribe[ ] direction with sufficient completeness and precision that the bureau retains no residual discretion to take environmental factors into consideration." DOI Handbook § 1.1(a)(4). It is unclear how Interior expects to apply this Handbook language. But we note that FLPMA, the Mineral Leasing Act, and other statutes give Interior both broad authority to consider environmental factors, and the obligation to protect environmental resources. These laws must be "interpreted and administered" to "the fullest extent possible" to ensure that agencies analyze and consider the environmental impacts of their decisions. 42 U.S.C. § 4332.

C. The Agency has created a functional equivalence exception that is not supported by the statute.

The Agency also has sought to exempt from NEPA review situations where "[t]he proposed action is an action for which another statute's requirements serve the function of Agency compliance with NEPA." DOI Handbook § 1.1(a)(5). The Agency's creation of a blanket "functional equivalence" exception to NEPA review is unlawful and unfounded.

When Congress amended NEPA in the Fiscal Responsibility Act, Pub. L. No. 118-5, 137 Stat. 10, it foreclosed reliance on the "functional equivalence" doctrine to exempt Agency proposals from NEPA. Congress amended NEPA section 102(2)(C), 42 U.S.C. § 4332(2)(C), to clarify that agencies can avoid the broad mandate to prepare NEPA analyses of "every" proposal for "major Federal action[]" "where compliance would be inconsistent with other statutory requirements." Pub. L. No. 118-5, § 321(a)(3)(A), 137 Stat. at 38. The revised NEPA section 106 explains that narrow exemption, limiting the circumstances where another statute relieves agencies of their duty to "prepare an environmental document" under NEPA to only where (1) "the proposed agency action is excluded pursuant to . . . another provision of law" or (2) "the preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law." 42 U.S.C. § 4336(a)(2), (3).

The Fiscal Responsibility Act adopted "elements of the BUILDER Act." 169 Cong. Rec. S1,877 (daily ed. June 1, 2023) (statement of Senator Capito); *see* Pub. L. No. 118-5, § 321, 137 Stat. at 38. Congress declined, however, to endorse the functional equivalence exemption, which the BUILDER Act, as originally proposed, would have codified. *See* H.R. 1577, 118th Cong. § 2(b) (2023) (proposed section 106(a)(6)).

Congress's codification of express, narrow exemptions from NEPA's mandate that federal agencies prepare NEPA documents for proposed actions precludes agencies from creating an implied "functional equivalence" exemption, which Congress considered and declined to adopt. *See United States v. Johnson*, 529 U.S. 53, 58 (2000) ("When Congress provides exceptions in a statute, . . . [t]he proper inference . . . is that Congress . . . limited the statute to the ones set forth"). The inclusion of *any* functional equivalence requirement cannot be squared with the statute. It thus should be excluded from the rules for that reason alone.

Moreover, CEQ in the past has expressly declined to create this categorical functional equivalence exception to NEPA review, as it would go "beyond the scope of the NEPA statute and case law" and "could be construed to expand functional equivalence beyond the narrow contexts in which it has been recognized." 89 Fed. Reg. at 35459–60. Indeed, while in the past, some courts applied a judge-created "exemption from [NEPA's] literal requirements" to a narrow subset of "environmentally protective regulatory actions" taken by federal "environmental agencies" like U.S. Environmental Protection Agency, that exemption has never been extended to proposals to conduct destructive activities made by non-environmental agencies. *Env't Def. Fund, Inc. v. EPA*, 489 F.2d 1247, 1257 (D.C. Cir. 1973); *see Portland Cement Ass'n v.*

Ruckelshaus, 486 F.2d 375, 387 (D.C. Cir. 1973) ("NEPA must be accorded full vitality as to non-environmental agencies."). The Agency has not acknowledged CEQ's prior explanation, let alone explained its basis for deviating from it. Accordingly, it is unlawful for the agency to include such a requirement.

VIII. The Agency Has Impermissibly Expanded The Use Of Categorical Exclusions.

A. The Agency's process for adopting categorical exclusions inappropriately excludes public comment.

In the 2024 CEQ regulations, agencies were required to "substantiate" any "proposed new or revised categorical exclusion with sufficient information to conclude that the category of actions does not have a significant effect, individually or in the aggregate, on the human environment." 40 C.F.R. § 1507.3(c)(8). Importantly, the agency is meant to "provide this substantiation in a written record that is made publicly available as part of the notice and comment process." *Id*. The Agency has abandoned that commitment here, explaining that it will publish public notice (with no mention of notice and comment). 90 Fed. Reg. at 29506 (43 C.F.R. § 46.205(h)); DOI Handbook § 1.4. The Agency has not explained the reason for limiting public review, nor has it explained why a change from the prior approach is justified. And such a shift makes little sense—in determining whether a "category of actions . . . *normally* does not significantly affect the quality of the human environment," 42 U.S.C. § 4336e(1) (emphasis added), the Agency should solicit broad feedback about the effects a particular type of action can have. The Agency should guarantee public comment or at least explain its reasoning for turning around long-settled standards.

B. The Agency has placed its thumb on the scale of applying categorical exclusions.

The Agency also appears to have modified its standards to make it easier to apply categorical exclusions, without justification or explanation. For example, the Agency has given itself multiple bites at applying categorical exclusions. Even where an existing categorical exclusion might not apply to the action, the Agency then must "consider whether to adopt" a categorical exclusion that "another agency has already established" or even to "establish[]" a "new" exclusion (or revise an old one) to cover the action. DOI Handbook 1.2(a). This stands at sharp odds with past practice: CEQ had provided only limited authority to adopt categorical exclusions in the context of a particular action, permitting agencies to do so in the context of more "programmatic" environmental review, where agencies would necessarily be taking a broader view. 40 C.F.R. § 1501.4(c); *see* 89 Fed. Reg. at 35472.

Extending this authority to reach a single action undermines the whole point of a categorical exclusion—that the Agency has assured itself that across a category of actions, that the category "normally does not significantly affect the quality of the human environment." 42 U.S.C. § 4336e(1). When the Agency can reach out to find a categorical exclusion to resolve its

environmental review in the context of a specific case, that puts a thumb on the scale of finding that the categorical exclusion applies, and it creates a risk that the Agency will not appropriately consider the broad set of contexts in which that category of actions can arise. Accordingly, the Agency should limit the circumstances where it can adopt new categorical exclusions, or at least ensure that the normal safeguards for proper adoption of such exclusions will apply with equal force when categorical exclusions are adopted in case-specific contexts.

C. Agencies impermissibly permit combining application of multiple categorical exclusions to exempt actions not covered by a single exclusion.

The Agency indicated that it may be authorizing the unlawful combining or "stacking" of categorical exclusions to preclude environmental review of actions that would not be covered by a single exclusion. The Agency "may apply multiple categorical exclusions in combination to cover a single proposed action." 90 Fed. Reg. at 29506 (43 C.F.R. § 46.205(f)). This workaround, also known as "stacking" categorical exclusions, is unlawful because it runs contrary to NEPA's structure and purpose by allowing agency actions with potentially significant impacts to evade NEPA review. *See* 42 U.S.C. §§ 4336(a)(2), (b)(2); *Friends of the Inyo v. U.S. Forest Serv.*, 103 F.4th 543, 556–57 (9th Cir. 2024).

Starting with the statutory text, NEPA requires an agency to prepare an EIS or EA unless "the proposed agency action is excluded pursuant to *one of* the agency's categorical exclusions, another agency's categorical exclusions consistent with section 4336c of this title, or another provision of law." 42 U.S.C. § 4336(b)(2) (emphasis added); *see also* 42 U.S.C.§ 4336(a)(2) (same). By specifying that, to be exempt from the EA or EIS requirement, the agency action must be covered by "one of" the categorical exclusions, Congress made clear that agencies may not combine multiple categorical exclusions to exclude a single proposed action. *Cf. Friends of the Inyo*, 103 F.4th at 554–55 (plain text of Forest Service regulations requiring proposed action to fall within "one of' the categorical exclusions or within "a" categorical exclusion does not permit "the agency to combine CEs when no CE alone could cover a proposed action").

NEPA's structure and purpose leads to the same conclusion. Under NEPA, categorical exclusions serve to streamline the environmental process while still ensuring that actions with potentially significant environmental effects receive adequate review, by allowing agencies to forego preparation of an EA if an agency has already determined that the type of action at issue does not normally have significant environmental effects. *See id.* at 556; 42 U.S.C. § 4336e(1). But combining multiple categorical exclusions to avoid preparing an EA for an action that would not be covered by a single categorical exclusion undermines this function. As the court in *Friends of the Inyo* explained: "Any project can be broken down into seemingly innocuous independent acts. The fact that the Forest Service has found categorical exclusions normally do not have a significant effect on the human environment, does not mean they have no effect, and combining carefully defined exclusions renders these calculated risks unknown." *Friends of the Inyo*, 103 F.4th at 557 (internal quotation marks and citation omitted).

Combining such categorical exclusions to avoid preparing an EA or even an EIS circumvents NEPA's information-forcing function and undermines the statute's core environmental protection purpose. Accordingly, the Agency should make clear in the final rule that combining categorical exclusions is impermissible where a single exclusion does not cover the entire project.

D. The Agency must document its use of categorical exclusions.

In addition, the IFR states that "reliance on any of [the departmental categorical exclusion] to support approval of a proposed action need not be documented." 90 Fed. Reg. at 29506 (43 C.F.R. § 46.210). This would appear to make it very difficult for the public to understand an agency's rationale for not preparing an environmental assessment or EIS. It would also invite legal challenges to agency decisions issued with a categorical exclusion, and make it more likely that those actions will be set aside as arbitrary and capricious.

At the same time, ending Interior's long-standing practice of documenting reliance on a categorical exclusion will do little to streamline agency decisions. Categorical exclusion documentation typically involves just a brief summary of the action with a one-page checklist confirming whether any extraordinary circumstances apply. *See, e.g.*, example, attached (five-page BLM categorical exclusion for decision to suspend oil and gas leases). This poses a minimal burden and represents an important step in showing compliance with NEPA. BLM has offered no reasoned explanation for departing from long-standing agency practice here.[8]

E. Eliminating the extraordinary circumstance for actions that may violate environmental laws is arbitrary and capricious.

The IFR also eliminates the extraordinary circumstance precluding the use of a categorical exclusion for actions that may violate federal, state, tribal or local law protecting environment. 90 Fed. Reg. at 29501; *compare* 43 C.F.R. § 46.215 (2024). The Agency explains that a potential legal violation "is a question that goes beyond the procedural requirements of NEPA and may be better considered and appropriately addressed by the Responsible Officer when making the decision." 90 Fed. Reg. at 26501. Interior also asserts that noncompliance with environmental laws "is not relevant to the determination of whether the proposed action may have significant environmental effects." *Id.*

This rationale is arbitrary and capricious because it ignores both of the twin purposes of NEPA: it would prevent the public from recognizing legal problems with a proposed action, and may also prevent agency staff from focusing on legal concerns when deciding whether to approve such an action. If anything, this change would make it easier for agency staff to sweep

[8] The Agency's approach also contrasts with the new Forest Service procedures, which require categorical exclusion documentation in the form of a Finding of Applicability and No Extraordinary Circumstances (FANEC). The Agency has offered no explanation for taking a different approach than the Forest Service.

legal concerns under the rug in order to approve actions that are likely to have significant legal and environmental problems. Noncompliance with environmental laws also is plainly relevant to whether an action may have significant environmental effects: those legal violations may result in environmental harms that should be prevented by the laws in question.

F. Interior arbitrarily retained the Bureau of Ocean Energy Management's categorical exclusion for offshore oil and gas exploration and development activities in the Gulf of Mexico.

Interior's Handbook of NEPA Policies carries forward an outdated and demonstrably unprotective categorical exclusion that excludes the majority of oil and gas development activities approved by the Bureau of Ocean Energy Management (BOEM) in the Gulf of Mexico from the scrutiny required by NEPA. That categorical exclusion covers:

> Approval of an offshore lease or unit exploration. development/production plan or a Development Operation Coordination Document in the central or western Gulf of Mexico (30 CFR 250.2) except those proposing facilities: (1) In areas of high seismic risk or seismicity, relatively untested deep water, or remote areas, or (2) within the boundary of a proposed or established marine sanctuary, and/or within or near the boundary of a proposed or established wildlife refuge or areas of high biological sensitivity; or (3) in areas of hazardous natural bottom conditions; or (4) utilizing new or unusual technology.

DOI Handbook, app. 2, at 70 (§ 15.4(B)(10)).

In 1981, Interior first adopted this categorical exclusion for oil and gas activities in the Outer Continental Shelf (OCS) in much of the Gulf of Mexico, allowing exploration and development plans to avoid the site-specific analysis of potential consequences otherwise required by NEPA. Over more than four decades, the repeated invocation of this exclusion has contributed to lax governmental oversight and a failure to grapple with the effects of long-term resource extraction in the Gulf, facilitating the area's unofficial status as the country's offshore oil and gas sacrifice zone.

Ill-conceived from the beginning, this categorical exclusion has only become more untenable over time. Its use has continued as the volume and character of drilling in the Gulf has intensified and as the harms to marine species have accumulated and become more manifest. As just one example, BOEM continues to invoke the exclusion even following the 2010 catastrophic Deepwater Horizon blowout—an exploration well *authorized under the categorical exclusion*—which caused unprecedented environmental destruction across thousands of square miles of the Gulf.

Despite the pile of evidence showing that continued application of the categorical exclusion grows more dangerous every year, BOEM continues to apply it to an alarming number of activities in the Gulf. From Jan. 1, 2018, through December 31, 2022, for example, BOEM approved or conditionally approved approximately 600 new, revised, or supplemental

Development Operation Coordination Documents (DOCDs) and approximately 400 new, revised, or supplemental Exploration Plans (EPs). Of those, BOEM invoked the categorical exclusion to approve nearly all the DOCDs (about 560 out of 600) and about a quarter of the EPs (approximately 90 out of 400 EPs). In deeper waters (≥ 1000'), where drilling is progressively more dangerous as depth increases, BOEM approved over 200 new, revised, and supplemental DOCDs and over 60 EPs for wells using the categorical exclusion.

It is far past time to repeal this outdated and environmentally destructive exclusion. But, contrary to past steps and promises to reconsider this categorical exclusion and its application, BOEM has instead determined to retain the categorical exclusion unchanged. In the wake of the BP Deepwater Horizon disaster, BOEM issued a memo stating that the exploration and development categorical exclusion should not be invoked for activities in deeper waters and announcing its intent to begin the process of a "comprehensive review and evaluation of CEs for offshore oil and gas activities." Memorandum from Michael R. Bromwich, Director, BOEMRE to Walter Cruickshank, Deputy Director, BOEMRE, at 1 (Aug. 16, 2010).[9] In October of 2010, BOEM took the first step, publishing a notice of intent in the Federal Register to review the OCS categorical exclusions. 75 Fed. Reg. 62418, 62418 (Oct. 8, 2010) (to "conduct a broad review of its categorical exclusions" for OCS decisions).

In January 2011, the Deepwater Commission issued its final report on the multiple failures that led to the Deepwater Horizon oil disaster. *See* National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling 82 (Jan. 2011). It concluded that "the breakdown of the environmental review process for OCS activities was systemic and that Interior's approach to the application of NEPA requirements in the offshore oil and gas context needs significant revision." *Id.* at 260. The report cited Interior's use of categorical exclusions and its failure to conduct site-specific environmental analysis of drilling activities as examples and recommended that Interior "revise and strengthen [its] NEPA policies, practices, and procedures to improve the level of environmental analysis, transparency, and consistency at all stages of the OCS planning, leasing, exploration, and development process." *Id.* at 261.

In early 2017, then-BOEM Director Abigail Hopper issued a directive to stop using the categorical exclusion for both EP and DOCD approvals "because of the scale, scope, and complexity of operations and in order to allow for the consideration of alternatives and to provide more transparency." Memorandum from Abigail Ross Hopper, Director, BOEM, to Walter Cruickshank, Deputy Director et al., at 2 (Jan. 6, 2017) ("Hopper Memo"). All future approvals would "require preparation of a site-specific environmental assessment, programmatic environmental assessment, or equivalent environmental document that provides the *hard look* required by the NEPA." *Id.* (emphasis added). Director Hopper also stated that BOEM had

[9] BOEM defined the scope of the policy based not on actual water depth, but on the type of blowout preventer used, i.e., "a subsea blowout preventer (BOP) or a surface BOP on a floating facility." *Id.*

"decided to propose to delete the BOEM CEs" related to the approval of OCS exploration and development plans and would soon publish the proposal in the Federal Register for public comment. *Id.* at 1.

Just two months after President Trump took office in 2017, however, BOEM's new Acting Director, Walter Cruickshank, issued a directive reinstating the use of categorical exclusions for EP and DOCD approvals. *Id.* The only explanation was that the categorical exclusions would continue until such time that BOEM formally revised its categorical exclusions. *Id.* But BOEM has not, until now, issued any revisions to its categorical exclusions.

In July 2023, Earthjustice and a number of other conservation groups (Center for Biological Diversity, Bayou City Waterkeeper, Sierra Club, Friends of the Earth, and Healthy Gulf), petitioned BOEM to repeal this categorical exclusion. *See* Petition for Rulemaking: Discontinuing use of Categorical exclusions for Approving Exploration and Development Operations Coordination Documents in the Gulf of Mexico (July 12, 2023) (attached). But rather than consider the extensive evidence before the agency further illustrating the acknowledged failings of the categorical exclusion, and the pending petition, the Agency has decided in its IFR to retain the exclusion wholesale and with no explanation for doing so.

Compounding this error, Interior has also amended its list of "extraordinary circumstances" that would otherwise limit to some degree the applicability of this and other categorical exclusions in situations where there are potentially significant effects that warrant a more thorough under NEPA. *See* 90 Fed. Reg. at 29506 (43 C.F.R. § 46.215). In particular, a revision to 43 C.F.R. § 46.215(e) replaces the requirement that a categorical exclusion may not be used when the project is related to other actions with "individually insignificant but cumulatively significant environmental effects" with a vague refence to a relationship to "other actions that implicate significant environmental effects." It is unclear what Interior intended to accomplish with this change—and the IFR's preamble and the Handbook are silent on this change. *See* 90 Fed. Reg. at 29501.

To the extent that this change is meant to allow a categorical exclusion unless the project is related to another (single) action that itself *already* has significant environmental effects, it drastically narrows the exception. It potentially allows series or an aggregate of smaller "individually insignificant actions" to accumulate significant effects that are never analyzed under NEPA. Oil and gas activity in the Gulf—in the aggregate, if not also on a project-specific level—is significant. Regardless of whether BOEM considers a single drilling operation to be significantly disruptive, the overarching significance is apparent in the larger context of oil and gas development (and associated industrialization) in the Gulf of Mexico. Both the offshore and onshore environments suffer from the accumulated burdens of oil and gas exploration and extraction over the decades. At bottom, approvals of EPs and DOCDs in the Gulf have cumulatively significant environmental effects. NEPA's look-before-you-leap mandate is designed in part to prevent precisely this kind of death by a thousand cuts that results from

looking myopically at a series of fragmented or segmented actions that add up to significant environmental harm.

IX. The Agency Has Impermissibly Altered The Scope Of Effects It Must Consider.

NEPA's core requirement is that an agency provide a "detailed statement" on "reasonably foreseeable environmental effects of the proposed agency action," and any "reasonably foreseeable adverse environmental effects which cannot be avoided." 42 U.S.C. § 4332(C)(i)–(ii). The scope of these requirements turns on what effects of the proposed agency action the agency must consider. For 50 years, CEQ interpreted that scope in a stable, common-sense way, leading to a broad shared understanding among courts, the regulated community, and the impacted public. The Agency has now abandoned that framework, without any explanation for doing so and without any conceivable basis for doing so. The Agency should not abandon such stable guidance. Nor should the Agency abandon its guidance on the need to consider climate-related effects or environmental justice considerations. Those effects fall squarely within NEPA's requirements, and the Agency should not abandon their consideration without explanation.

A. The Agency omitted the familiar framework that has governed the scope of NEPA review since just after NEPA's passage.

CEQ's regulations have always included three types of effects: (1) direct effects, "which are caused by the action and occur at the same time and place"; (2) indirect effects, "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable," and (3) cumulative effects, "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. § 1508.1(i)(1)–(3). The agency's new process makes no mention of this familiar framework. It is not clear whether the Agency intended to abandon consideration of these kinds of effects—its IFR does not acknowledge that it has disregarded this framework, let alone explain why it makes sense to do so. The Agency should clarify whether it will continue to consider these kinds of effects, and, if it does not, explain the basis for that change in position. *See Fox*, 556 U.S. at 515

Direct Effects. There could be no basis for eliminating the consideration of direct effects. They are, by definition, the effects "caused by the action and occur at the same time and place." 40 C.F.R. § 1508.1(i)(1). Nothing in Agency's Handbook suggests those would be excluded, as it embraces considering effects that are not "remote in time, geographically remote, or the product of a lengthy causal chain." DOI Handbook § 6.1(j)(2). By design, direct effects satisfy that standard. The Agency should clarify that is so.

Indirect Effects. The Agency also should retain consideration of indirect effects, which are a crucial but often contentious set of impacts with which agencies and courts must grapple. The deletion of the definition and references to indirect effects is unlawful and will lead to confusion and litigation.

The statute itself contemplates consideration of indirect effects. NEPA reflects Congress's recognition of the "impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances." 42 U.S.C. § 4331(a). The statute directs the federal government to look beyond the immediate intended effects of an action, and specifically directs agencies to consider "undesirable and unintended consequences," 42 U.S.C. § 4331(b)(3), and even "presently unquantifiable environmental amenities and values," 42 U.S.C. § 4332(B). NEPA calls on agencies to recognize "the worldwide and long-range character of environmental problems." 42 U.S.C. § 4332(I). Thus, agencies must consider the relationship between "local short-term uses" of the environment and "long-term productivity," all with an eye toward "any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented." 42 U.S.C. § 4332(C)(iv)–(v).

In other words, consideration of indirect effects ensures that the effects of an agency action are not "overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast." *Robertson*, 490 U.S. at 349. Artificial constraints on the effects the Agency can consider creates the risk the Agency will "act on incomplete information, only to regret its decision after it is too late to correct." *Marsh*, 490 U.S. at 371. The act's "manifest concern with preventing uninformed action" demands as much. *Id.*

Adhering to this statutory direction, CEQ has long interpreted NEPA to require consideration of indirect effects. CEQ first addressed the need to analyze indirect or secondary effects in the 1970 Interim Guidelines. *Statements on Proposed Federal Actions Affecting the Environment*, 35 Fed. Reg. 7390, 7391 (May 12, 1970) ("Interim Guidelines"). Those guidelines explained that "[b]oth primary and secondary significant consequences for the environment should be included in the analysis." *Id.* As an example, the guidance chose "the implications, if any, of the action for population distribution or concentration" and "any possible changes in population patterns upon the resource base." *Id.* CEQ repeated that guidance in 1971, *Statements on Proposed Federal Actions Affecting the Environment*, 36 Fed. Reg. 7724, 7725 (Apr. 23, 1971), and expanded on it in the 1973 guidelines. Those guidelines explained that "[s]econdary or indirect, as well as primary or direct, consequences for the environment should be included in the analysis." *Preparation of Environmental Impact Statements: Guidelines*, 38 Fed. Reg. 20550, 20553 (Aug. 1, 1973). Indeed, the guidance recognized, these indirect effects "may often be even more substantial than the primary effects of the original action itself." *Id.*

The annual reports CEQ prepared reached the same conclusion. CEQ drew on examples where agencies considered the indirect effects of their proposed actions when they were implementing the statute. CEQ, *Environmental Quality, the Second Annual Report of the Council on Environmental Quality* 25–26 (1971). And it lamented those instances where agencies would "ignore the secondary" effects, because they "may be more significant than the project's primary effects." CEQ, *Environmental Quality, the Fifth Annual report of the Council on Environmental*

Quality 410–11 (1974); *see also* CEQ, *Environmental Quality, the Sixth Annual Report of the Council on Environmental Quality* 656 (1975). CEQ anticipated that as agencies continued to develop "experience" in "defining and understanding" indirect effects, their analysis would play a useful role in environmental impact statements. CEQ, *The Fifth Annual Report of the Council on Environmental Quality* 411.

During this same period, courts consistently interpreted NEPA to require consideration of indirect effects. An early district court decision recognized that NEPA directs agencies to consider the predictable "ripple" effects of their actions. *Citizens Organized to Def. Env't v. Volpe*, 353 F. Supp. 520, 540 (S.D. Ohio 1972). And in *City of Davis v. Coleman*, for example, the court held that the agency needed to consider the effects that a proposed highway interchange could spur urban development that occurs as a result of the project. 521 F.2d 661, 674–77 (9th Cir. 1975). That was "precisely the kind of situation Congress had in mind when it enacted NEPA." *Id.* at 675. That court was not alone in concluding that NEPA requires consideration of at least some indirect effects. *See, e.g.*, *City of Rochester v. U.S. Postal Serv.*, 541 F.2d 967, 973–74 (2d Cir. 1976) (concluding that NEPA requires consideration of indirect effects); *Jackson Cnty. v. Jones*, 571 F.2d 1004, 1013 (8th Cir. 1978) ("Under NEPA, indirect, as well as direct, costs and consequences of the proposed action must be considered.").

CEQ codified this early consensus in the 1978 regulations, defining effects to include "[i]ndirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. 1508.8; 43 Fed. Reg. at 56004. This definition of effects proved remarkably durable. CEQ omitted it in 2020, but less than two years later, CEQ returned to the original definition because it "better reflects NEPA's statutory purpose, policy, and intent and is more consistent with the case law interpreting NEPA's requirements." 87 Fed. Reg. at 23464. Moreover, the omission of this requirement in the 2020 rule had created "disruption and uncertainty," in part because it suggests that agencies should depart from the "context-specific inquiry that they have undertaken for more than 40 years." 87 Fed. Reg. at 23466. To that end, while the omission of those requirements still might allow agencies to "continue to consider indirect . . . effects, an agency could misunderstand the language of the rule to prohibit considering" such effects. 87 Fed. Reg. at 23466–67.

CEQ also addressed any concerns with continuing to use the indirect effects standard. It observed that "longstanding CEQ and Federal agency experience and practice ha[d] demonstrated that th[is] interpretation[] promote[s] the aims of the NEPA statute and [is] practical to implement." 87 Fed. Reg. at 23466. The inclusion of indirect effects would "not result in consideration of a limitless universe of effects," and any concern that consideration of such effects would "lead[] to longer timelines" was unfounded "given the long history of agency and practitioner experience with analyzing" such impacts as "well as modern techniques leveraging science and technology to make environmental reviews comprehensive yet efficient." 87 Fed. Reg. at 23463, 23467. And, in the end, it is "critical that analyses are complete and

scientifically accurate to ensure that decision makers and the public are fully informed." 87 Fed. Reg. at 23467.

Consideration of indirect effects is critical for different Interior component agencies to make informed decisions about many of their management actions. For example, when offering oil and gas leases, the Bureau of Land Management must evaluate the impacts to the leased lands when the leases are drilled, along with the impacts of that drilling on air quality, rivers and streams, and wildlife in the area. Drilling on an oil and gas lease involves an indirect impact of the issuance of that lease. Courts have required an analysis of reasonably foreseeable drilling impacts prior to issuance of the lease because an oil and gas lease generally creates a contractual right for the lessee to use those lands for drilling. *See, e.g.*, *Sierra Club v. Peterson*, 717 F.2d 1409, 1414–15 (D.C. Cir. 1983); *Conner v. Burford*, 848 F.2d 1441, 1451 (9th Cir. 1988). Failing to analyze the impacts of drilling before issuing leases would result in exactly the kind of uninformed decision making NEPA forbids.

But now, the Agency has omitted reference to indirect effects. Again, the agency has not explained the reason for this omission, and at least some portions of its Handbook gesture at indirect effects, *see* DOI Handbook, app. 3, at 13–14. But it's not possible to say whether the agency omitted the earlier definition of effects because it intends to curtail its consideration of indirect effects or merely because it wanted to remove this express reference. So, at a minimum, the Agency's approach is going to lead to confusion. And more fundamentally, to the extent the agency has changed its approach, it has done so without engaging with the statutory authority, caselaw, or CEQ's extensive explanation for expressly including indirect effects analysis in NEPA review. *See Fox*, 556 U.S. at 515. The Agency must at least explain why it has chosen a different path here.

The Agency cannot justify its omission of the indirect effects provisions with any of the recent developments the IFR generally references. The recent statutory amendments could not justify abandoning indirect effects analysis. CEQ retained its definition of indirect effects in the regulations it promulgated after those statutory amendments. With good reason: with respect to effects, the statute added the "reasonably foreseeable" qualifier, 42 U.S.C. § 4332(C)(i)–(ii), but that limitation had long been present in CEQ's regulations and thus was consistent with CEQ's "indirect effects" analysis. *See, e.g.*, 87 Fed. Reg. at 23467 ("[T]he final rule will retain language on reasonable foreseeability.").

The decision in *Seven County* likewise does not alter the need for agencies to consider indirect effects. As discussed above, the validity of CEQ's regulations was not before the Court. More fundamentally, the premise of the Court's analysis was that indirect effects must be considered, recognizing that there is a question as to "how far" down the causal chain an agency must "go in considering the indirect effects that might occur outside the area of the immediate project." *Seven County*, 145 S. Ct. at 1512. What was "clear" is that "the environmental *effects* of the project at issue may fall within NEPA even if those *effects* might extend outside the

geographical territory of the project or might materialize later in time"—that is, if they are not direct effects. *Id.* at 1515 ("[I]ndirect effects can sometimes fall within NEPA."). While agencies have some discretion about where to draw the line, *Seven County* surely does not stand for the proposition that indirect effects can be set aside altogether, as the Agency's omission of an express requirement to consider indirect effects could be read to suggest. The Agency should make clear that indirect effects still may be considered.

Cumulative Effects. Any mention of cumulative effects—another critical set of environmental impacts that can be as contentious as it is crucial—has likewise evaporated from the Agency's new standards. Cumulative effects are those that appear minor when considered in isolation but are significant when added to numerous other seemingly minor impacts. The Agency also should reverse this omission.

The same features of the statute discussed in the context of indirect effects analysis support consideration of cumulative effects. Again, in NEPA, Congress meant to situate effects analysis in the context in which they arise, which reflects a set of complex "interrelations of all components of the natural environment." 42 U.S.C. § 4331(a). And again, NEPA seeks to capture all "undesirable and unintended consequences," 42 U.S.C. § 4331(b)(3), that flow from a project, and embraces consideration of problems that are more global and "long-range" in scope, *see* 42 U.S.C. § 4332(I). To that end, agencies act as "trustee of the environment for succeeding generations," 42 U.S.C. § 4331(b)(1), and so should explore the "relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity," 42 U.S.C. § 4332(C)(iv). Consideration of cumulative effects is necessary to ensure that the Agency is acting on complete information.

NEPA's legislative history confirms the point, surfacing the complexity of environmental impacts and the consequences of "letting them accumulate in slow attrition of the environment" and the "ultimate consequences of quiet, creeping environmental decline." 115 Cong. Rec. 29070 (Oct. 8, 1969); *see also* Report Accompanying S. 1075, National Environmental Policy Act of 1969, Senate Committee on Interior and Insular Affairs (July 9, 1969).

Shortly after NEPA's passage, CEQ's interim guidelines explained that the statute should be "construed by agencies with a view to the overall, cumulative impacts of the action proposed." Interim Guidelines, § 5(b) (Apr. 30, 1970); *see also* 36 Fed. Reg. at 7724. CEQ rooted its interpretation in the statute. *See* Interim Guidelines, § 7(a)(iv) (agency must "Assess the action for cumulative and long-term effects from the perspective that each generation is trustee of the environment for succeeding generations."). In its 1973 guidelines, CEQ repeated the earlier guidance but further explained that "agencies should bear in mind that the effect of many Federal decision about a project . . . can be individually limited but cumulatively considerable." 38 Fed. Reg. at 20551. NEPA review solves that problem by requiring agencies to consider how that limited effect fits into a broader context where decisions made over "a period of years" can result in significant impacts on the environment. *Id.*

At the same time (just after NEPA's passage), federal courts quickly and repeatedly recognized that environmental effects should not be considered in a vacuum. In 1972, the Second Circuit acknowledged the common-sense idea that "even a slight increase in adverse conditions that form an existing environmental milieu may sometimes threaten harm that is significant." *Hanly v. Kleindienst*, 471 F.2d 828, 831 (2d Cir. 1972). At a minimum, then, it is important to consider effects against the backdrop of "the existing environment of the area which is the site of a major federal action" because "[o]ne more factory polluting air and water in an area zoned for industrial use may represent the straw that breaks the back of the environmental camel." *Id.* In 1975, the Second Circuit once again explained that Congress had recognized that a "good deal of our present air and water pollution has resulted from the accumulation of small amounts of pollutants added to the air and water by a great number of individual, unrelated sources." *Nat. Res. Def. Council v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975). The court thus interpreted the statute to account for this problem, explaining that NEPA was "in large measure, an attempt by Congress to instill in the environmental decisionmaking process a more comprehensive approach so that long term and cumulative effects of small and unrelated decisions could be recognized, evaluated and either avoided, mitigated or accepted as the price to be paid for the major federal action under consideration." *Id.* Other courts likewise embraced the idea that "cumulative effects can and must be considered on an ongoing basis." *Swain v. Brinegar*, 517 F.2d 766, 775 (7th Cir. 1975); *see also Balt. Gas & Elec. Co.*, 462 U.S. at 106–07 ("[W]e agree with the Court of Appeals that NEPA requires an EIS to disclose the significant health, socioeconomic and cumulative consequences of the environmental impact of a proposed action."); *Sierra Club v. Morton*, 510 F.2d 813, 824 (5th Cir. 1975) ("CEQ guidelines, Interior regulations, Bureau of Land Management regulations, and prior court decisions all require that federal agencies consider the cumulative effect of similar actions."); *cf. Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) ("Thus, when several proposals for coal-related actions that will have cumulative or synergistic environmental impact upon a region are pending before an agency, their environmental consequences must be considered together.").

As with indirect effects, CEQ codified the need to consider cumulative impacts in its 1978 regulations. The definition of effects included cumulative effects, *see* 40 C.F.R. § 1508.8 (1978), which were defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency . . . or person undertakes such other actions," 40 C.F.R. § 1508.7. The regulations further clarified that such impacts "can result from individually minor but collectively significant actions taking place over a period of time." *Id.*

CEQ's approach to cumulative effects again remained consistent ever since. Once again, CEQ omitted this reference to cumulative effects in the 2020 regulations, a massively contentious decision that resulted in extensive litigation, but (once again) less than two years later, CEQ returned to the original definition, because it "better reflects NEPA's statutory purpose, policy, and intent and is more consistent with the case law interpreting NEPA's

requirements." 87 Fed. Reg. at 23464. Indeed, the same rationales that justified restoration of indirect effects (described above) applied with equal force to cumulative effects. 87 Fed. Reg. at 23462–23467. CEQ made plain that it disagreed with the conclusion that "cumulative effects analyses divert agency resources from analyzing the most significant effects to effects that are irrelevant and inconsequential." 87 Fed. Reg. at 23467. To the contrary, "consideration of reasonably foreseeable cumulative effects allows agencies and the public to understand the full scope of potential impacts," and thus are "critical to sound agency decision making." *Id.*[10]

The Agency removed any direction or discussion of cumulative effects, but here again, it is unclear what this omission means. Its sole reference to "cumulative phenomena" indicates the Agency may intend not to consider cumulative effects. DOI Handbook DOI, app. 3, at 16. If that is true, then the Agency has changed position without engaging with key provisions of the statute, caselaw interpreting it, or CEQ's extensive explanation for including cumulative effects analysis in its NEPA review. That renders its exclusion of cumulative effects unsupported. *See Fox*, 556 U.S. at 515. The Agency must at least explain why it has chosen a different path here.

Indeed, the recent statutory amendments and the Supreme Court's decision in *Seven County* no more displace the obligation to consider cumulative effects than they replace the obligation to consider indirect effects. As with indirect effects, CEQ retained its definition of cumulative effects in the regulations it promulgated after those statutory amendments, and CEQ already had determined that the key statutory addition—the inclusion of a "reasonably foreseeable" qualifier, 42 U.S.C. § 4332(C)—is consistent with CEQ's "cumulative effects analysis. *See, e.g.*, 87 Fed. Reg. at 23467 ("[T]he final rule will retain language on reasonable foreseeability.").

Consideration of cumulative effects likewise is perfectly consistent with *Seven County*. When agencies are called on to consider the "effects on the environment that result from the incremental effects of the action," 40 C.F.R. § 1508.1(i)(3), that complies with "the textually mandated focus of NEPA" being "the project at hand," *Seven County*, 145 S. Ct. at 1515. What the concept of cumulative effects adds is that the effects of the project at hand must be considered in the relevant context—that is, when the effects of the project at hand are "added to effects of other . . . actions" the Agency reasonably knows have taken place or reasonably foresees will take place in the future. 40 C.F.R. § 1508.1(i)(3). The Agency is not being called on to account for the environmental effects of a separate project that is "initiated (or expanded) as a result of . . . the current project." *Seven County*, 145 S. Ct. at 1512–13. But rather, a consideration of cumulative effects reflects that the acknowledged effects of the project at hand must be assessed against the environmental backdrop in which the project at hand arises. In this

[10] Even under the 2020 regulations, CEQ distanced itself from the suggestion that cumulative effects would be omitted from NEPA reviews. Instead, environmental trends (like climate change) "would be characterized in the baseline analysis of the affected environment rather than as an effect of the action." 85 Fed. Reg. at 43331.

way, consideration of cumulative effects informs the consideration of the effects of the project itself. Or, to put it in terms of the effects "NEPA dictated that" the agency in *Seven County* must consider—the ways the new railroad line "could disrupt the habitat of protected species, or the new rail embankments could cause soil erosion into local bodies of water, or trains on the new line could pollute the air," 145 S. Ct. at 1516—a consideration of cumulative effects would at least require looking at the ways those effects might combine with other actions to disrupt the species, cause soil erosion, or pollute the air.[11]

For example, when BLM considers issuing an oil and gas lease or approving a drilling permit, it often has issued numerous other leases and drilling permits in the same area only a few months or years previously. Analyzing just the new leases or drilling permits, without accounting for the previous leasing and drilling in the same area, would provide an incomplete and inadequate view of the air and water pollution, degradation of wildlife habitat, and other impacts, caused by BLM's decisions. BLM has explained cumulative impacts in terms of the "straw on a camel's back" metaphor: "a single gas well[] may be of little significance. A hundred wells in the same area, however, may profoundly impact a given resource." BLM, *Guidelines for Assessing and Documenting Cumulative Impacts* 18 (Apr. 1994). A NEPA analysis "must consider the 'straws being added' by other BLM jurisdictions, and other land managing entities . . . ." *Id.* The context provided by analyzing cumulative impacts is required under NEPA.

B. The Agency may not categorically exclude climate change when evaluating the significance of effects.

As the United States government has recognized, climate change is the overarching environmental issue of our time. *Fifth National Climate Assessment*, U.S. Global Change Research Program, (Nov. 2023); *Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050*, U.S. Dept. of State and the Executive Office of the President (Nov. 2021); *Endangerment and Cause or Contribute Findings for Greenhouse Gasses Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66496, 66523 (Dec. 15, 2009) (finding that elevated concentrations of greenhouse gasses were likely to "endanger the public health and welfare of current and future generations"); *Massachusetts v. EPA*, 549 U.S. 497, 521 (2007) ("The harms associated with climate change are serious and well recognized."). It has been clear for many years that federal agencies have an obligation to assess climate impacts under NEPA, an obligation consistently affirmed by the courts. *See, e.g.*, *Vecinos para el Bienestar v. FERC*, 1321 6 F.4th, 1329–30 (D.C. Cir. 2021); *350 Mont. v. Haaland*, 50 F.4th 1254, 1266–70 (9th Cir. 2022); *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017); *Wild Earth Guardians v. Bureau of Land Mgmt*., 870 F.3d 1222 (10th Cir. 2017); *Ctr. for Biological Diversity v. Nat'l Highway*

[11] Indeed, the Court expressly recognized that one form of well-recognized cumulative analysis is called for, explaining that it often will be necessary to consider "other projects" where they are "so interrelated" as to inform the analysis of the project as issue. *Seven County*, 145 S. Ct. at 1517. So, there is every indication that the Court would expect that other forms of cumulative analysis would continue, too.

Traffic Safety Admin., 538 F.3d 1172 (9th Cir. 2008); *Mid-States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520 (8th Cir. 2003); *City of Los Angeles v. Nat'l Highway Traffic Safety Admin.*, 912 F.2d 478 (D.C. Cir. 1990). Given NEPA's textual directive to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations," 42 U.S.C. § 4331(b)(1), no other conclusion is possible. Consideration of climate impacts of federal agency actions is also compelled by NEPA's command to "utilize a systematic, interdisciplinary approach" that ensures the use of "natural and social science," and to "ensure the professional and scientific integrity" of NEPA documents. 42 U.S.C. § 4332(A), (D). Despite this administration's efforts to downplay the urgency of the climate crisis, the scientific consensus supporting it remains unimpeachable.

The 2024 CEQ regulations codified this requirement into regulation, clarifying that there is a linkage between the NEPA process and the statute's purpose. 89 Fed. Reg. at 35506–09; *see also* 88 Fed. Reg. at 49949, 49957. For example, § 1502.14(f) explained that the environmentally preferable alternative or alternatives are those that would best promote NEPA's policies by, for example, addressing climate change. 40 C.F.R. § 1502.14(f). Similarly, § 1502.15 identified the requirement to include anticipated climate-related changes to the environment and steps to take when that information is not readily available. 40 C.F.R. § 1502.15(b). Section 1502.16(a)(6)'s charge to agencies to analyze reasonably foreseeable climate change-related effects of both the proposed action and alternatives and on the proposed action and alternatives reflects long-standing law.

These changes to CEQ's rules were the subject of extensive public and expert input, and triggered considerable discussion from CEQ in its final rule. They also withstood legal challenges from a court that struck down other provisions of the rules. *Iowa v. Council on Env't Quality*, 765 F. Supp. 3d 859, 886 (D.N.D. 2025) (requirements to consider climate change are within CEQ's "zone of authority"). The rules were accompanied by detailed CEQ guidance that assisted agencies in assessing both a proposed action's contribution to the problem, as well as the potential impacts of a changing climate on federal projects. *See, e.g.*, *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*, 88 Fed. Reg. 1196 (Jan. 9, 2023). As the guidance recognized, "[c]limate change analysis is a critical component of environmental reviews and integral to Federal agencies managing and addressing climate change." *Id*. at 1198. Individual federal agencies have also taken extensive steps to plan for climate change in their individual planning and NEPA implementation. *See, e.g.*, *Report on Effects of a Changing Climate to the Department of Defense*, Office of the Under Secretary of Defense for Acquisition and Sustainment (Jan. 2019); *2023 Climate Action Plan Progress Report*, Department of Defense; *Climate Adaptation Plan 2024–2027,* U.S. Dept of Agriculture (May 2024); *Climate Adaptation and Resilience Plan*, Office of the Chief Scientist, U.S. Dept. of Agriculture (2024); *Climate Energy Adaptation Plan 2024–2027*, U.S. Dept. of Energy (May 2024); *2021 Climate Action Plan for Adaptation and Resilience*, U.S. Dept. of Commerce (Aug. 2021); *Climate Action Plan,* U.S. Dept. of the Interior (2021). And there has

been substantial outside scholarship providing detailed recommendations on how to integrate climate issues into NEPA reviews, scholarship that CEQ and agencies previously took seriously. *See, e.g.*, Romany M. Webb et al., *Evaluating Climate Risk in NEPA Reviews: Current Practices and Recommendations for Reform* (2022); Michael Burger & Jessica Wentz, *Evaluating the Effects of Fossil Fuel Supply Projects on Greenhouse Gas Emissions and Climate Change Under NEPA*, 44 Wm. & Mary Env't L. & Pol'y Rev. 423 (2020); Institute for Policy Integrity, *Toward Rationality in Oil and Gas Leasing: Building the Toolkit for Programmatic Reforms* (2021).

However, CEQ has revoked its regulations and guidance in their entirety. Interior's response ignores this history, and instead would exclude greenhouse gas emissions and climate change from the analysis of whether impacts are significant. DOI Handbook, app. 3, at 16. The Handbook states that an EIS will not be required "on the grounds of climate change or GHG [(i.e., greenhouse gas)] effects alone . . . because the effects of GHG emissions and global climate change are fundamentally cumulative phenomena; therefore it is not possible to track the effects of GHG emissions from a proposed action to climate change effects in a localized manner to be able to determine significance one way or the other and *they need not be analyzed*." DOI Handbook, app. 3, at 16. At one point, the Handbook even suggests that EAs may not need to analyze climate impacts at all. *See* DOI Handbook § 1.5(d)(1) ("In preparing the [EA] the bureau will focus its analysis on whether the environmental impacts of the proposed action are significant.").

This approach is arbitrary and capricious. Climate change "is widely regarded as the most pressing environmental threat facing the world today." *The Wilderness Soc'y v. U.S. Dep't of the Interior*, No. 22-cv-1871 (CRC), 2024 WL 1241906, at *24 (D.D.C. Mar. 22, 2024). Adopting an approach where climate change impacts do not "inform BLM's decision-making" would "run afoul of NEPA's purpose" and represent "a textbook example of arbitrary and capricious action." *Id.*[12]

Interior cannot categorically exclude GHGs from its NEPA analysis or significance determinations. For example, the direct operations of many BLM-approved fossil fuel projects—such as coal mines and oil and gas wells—can emit significant amounts of methane, which is a powerful GHG.[13] Just a single ventilation shaft at an underground coal mine, in fact, can emit a

[12] Interior's suggestion that it "is not possible" to meaningfully evaluate the GHG effects from a specific project is meritless. Several tools, such as the social cost of carbon, allow agencies to put GHG emissions into context and assess the magnitude of their impacts. Indeed, recent BLM NEPA documents have used the social cost of carbon (among other tools) when discussing climate impacts from oil and gas leases and other actions.

[13] *See* USEPA, *About Coal Mine Methane*, https://www.epa.gov/cmop/about-coal-mine-methane (last updated Mar. 11, 2025).

volume of methane comparable to the GHG emissions from putting more than 326,000 new cars on the road.[14] Interior cannot turn a blind eye to the GHGs emitted by the projects it approves.

Moreover, Interior agencies have broad statutory authority that requires them to expansively consider the impacts of their actions, including impacts to the "atmosphere." 43 U.S.C. § 1701(8); *see also id.* § 1702(c); 30 U.S.C. § 201(a) (decisions regarding coal leasing must consider "public interest"); 30 U.S.C. § 207(c) (Secretary of Interior must consider any "significant disturbance to the environment" prior to approving a coal mine plan involving federal coal); 30 C.F.R. § 746.14 (granting U.S. Office of Surface Mining broad authority to approve or disapprove mining of federal coal based on information prepared under NEPA, documentation about compliance with other federal laws, and "public comment"). Given this broad authority, Interior Department decisions may often need to analyze GHG impacts that occur well beyond the footprint of the coal mine or oil and gas project itself.

Moreover, Interior's NEPA reviews must consider how climate change will affect a proposed action—not just the extent to which an action will contribute to climate change. Many or most activities on public lands will be affected by climate change in coming years because warming temperatures are having a profound impact on those lands. Across the United States, climate change is contributing to more severe wildfire seasons, decreased snowpack, increased droughts, fragmented wildlife habitat corridors, and more destructive bark beetle infestations, among myriad other impacts. These types of well-documented climate impacts acutely affect federal public lands, including lands managed by the BLM, as well national parks, monuments, recreation areas, grasslands, wilderness areas, and areas managed by other Interior agencies such as the National Park Service.

Researchers at Utah State University in 2020 compared existing climate change research papers and BLM Resource Management Plans (RMPs) in the Inter-Mountain West, which cover 140 million acres of land managed by the BLM across 11 western states: Washington, Oregon, California, Idaho, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, and New Mexico. Elaine Brice, et. al., *Impacts of Climate Change on Multiple Use Management of Bureau of Land Management Land in the Intermountain West, USA*, Ecosphere, at 1, 6 (2020). The authors of the paper found that climate change is "causing non-linear and irreversible transitions in ecosystems managed by this agency." *Id.* at 2. In the tables below, presented in that paper, the authors document their findings from a literature review of scholarly papers on climate impacts to

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[14] *See* United Nations Economic Commission for Europe, *Climate Action Opportunity: Destroying Methane from Ventilation Air at Underground Coal Mines*, https://unece.org/sites/default/files/2025-02/Ventilation%20Air%20Methane%20Brief_Final_CMMJT-20%202025%20INF4.pdf (last visited Aug. 1 2025) (one large coal mine shaft can emit around 50,000 tonnes of methane annually); US EPA, *Greenhouse Gas Equivalencies Calculator*, https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator#results (last updated Feb. 24, 2025).

various lands uses for which the BLM manages (Table 3), *id.* at 14, and commonly cited climate impacts in the Intermountain West (Table 4), *id.* at 15.

Table 3. Climate change impacts on and interactions between various land uses for which the BLM manages.

Land use	Climate change impacts	Land use interactions
Conservation	• Distribution shifts upslope • Changes in abundance • Increased threat of invasive species • Habitat loss	• Grazing negatively impacts small mammal communities and causes habitat degradation • Energy development displaces wildlife • Timber, grazing, mining reduce habitat quality for fish
Ecosystem services	• Decreased water availability in summer • Poor air quality due to wildfire and longer pollen seasons • Decreased ability of forests to sequester carbon	• Pressure on water from mining, grazing, and energy development • Grazing can cause loss of streamside vegetation and increased erosion • Oil and gas extraction can contaminate groundwater
Cultural value	• Increased disturbances damage historic sites • Traditional practices and knowledge may erode	• Loss of natural characteristics of spiritual and cultural significance due to recreation, oil and gas, and grazing • Threatened by increased recreation (particularly motorized)
Recreation	• Overall increase in outdoor recreation participation • Lower elevations become unsuitable for snow-based recreation • Extreme summer temperatures dampen recreation • Sites with highly valued natural characteristics (e.g., glaciers) may have lowered visitation rates if threatened	• Managing for nonmotorized recreation may complement biodiversity and wildlife management, but conflict with timber and mining • Oil and gas extraction diminishes natural qualities valued by visitors • High potential of overlapping in area with oil and gas • Potential increases in motorized recreation may negatively impact other recreational, extractive, and conservation uses through increased dust and damage to biocrusts
Grazing	• Overall increased rangeland productivity due to increased temperatures and longer growing seasons • Low-elevation, low-moisture sites may have reduced productivity	• Grazing can reduce fire frequency/severity and invasive species • Negatively affect wildlife • Can damage riparian vegetation and stream quality • High potential of overlapping in area with oil and gas
Wild horses & burros	• No information in literature	• Spatial overlap with livestock grazing
Timber & logging	• Minimal effects, but overall long-term decline in timber production • Primary sensitivity is to increased incidences of wildfire, insects, and disease associated with climate change • Accelerated root disease	• Can affect stream quality and wildlife habitat • Thinning can reduce wildfire risk, clearcutting can increase wildfire risk
Mining & energy development	• Increased mudslides and fires may threaten infrastructure • Will be most affected by policies aiming to reduce GHG emissions	• Can contaminate groundwater • Causes reduced abundance and diversity of native species • Contributes to loss of natural qualities associated with recreation • High potential of overlapping in area with recreation and grazing • Threatens nutrient cycling and sediment transport

Table 4. Commonly documented impacts of climate change across the Intermountain West and examples of references that discuss such impacts.

Category	Impacts	References
Biological soil crust	Change to community structure and function	Washington-Allen et al. (2010), Root et al. (2011), Blay et al. (2017)
	Warm/dry climates host late-successional species and have more nitrogenase activity	Norton et al. (2011), Schwabedissen et al. (2017), Shaw et al. (2019)
Mammals	Distribution shifts poleward or upslope	Rowe et al. (2010), Lynn et al. (2018)
	Decline in some species abundance (e.g., bats, pika, small mammals)	Rowe and Terry (2014), Beever et al. (2016), Hayes and Adams (2017)
	Habitat loss	Malaney and Cook (2013), Beever et al. (2016), Mathewson et al. (2017)
	Chronic heat stress	Mathewson et al. (2017)
	Changes in food sources and animal activity	Butler (2012)
Birds	Decreased recruitment, fecundity, survival, range (e.g., spotted owl, sandhill crane, snowy plover, crossbill, sage grouse)	Peery et al. (2012), Thomas et al. (2012), Blomberg et al. (2014), Gerber et al. (2015), Brown and Bachelet (2017)
	Loss of habitat (e.g., band-tailed pigeons, songbirds, sage grouse)	Schrag et al. (2011), Friggens and Finch (2015), Homer et al. (2015), Coxen et al. (2017), Shirk et al. (2017)
Fish	Decline in cold-water species habitat	Isaak et al. (2015), Young et al. (2016), Roberts et al. (2017)
	Expansion of invasive species (e.g., brown trout)	Budy and Gaeta (2017)
	Hybridization	Young et al. (2016)
	Distribution shifts	Gresswell (2011)
Aquatic ecosystems	Warmer and more variable thermal/hydrologic conditions	Gresswell (2011), Strecker et al. (2011), Isaak et al. (2012), Leppi et al. (2012), Al-Chokhachy et al. (2013), Roberts et al. (2013), Muhlfeld et al. (2015)
	Prone to larger, more frequent disturbances	Isaak et al. (2012), Fesenmyer et al. (2018), Rudolfsen et al. (2019)
	Increased wildfire further warms streams	Isaak et al. (2018)
Water availability	Decrease in water availability due to increased evapotranspiration, altered precipitation patterns, reduced snowpack, and changes in timing of spring runoff	van Mantgem et al. (2009), Sanderson et al. (2012), Perry and Praskievicz (2017)
	Decreased ground- and surface water	Formica et al. (2014), Perry and Praskievicz (2017)
	Increased conflict over water	Sanderson et al. (2012)
Dust	Damage to vegetation, reduced snowpack and water supply, increased nutrient loading to aquatic ecosystems, respiratory and cardiovascular impacts on humans and animals	Duniway et al. (2019)
Discordant shifts in phenology	Advanced cheatgrass phenology	Boyte et al. (2016)
	Accelerated flowering dates	Munson and Sher (2015)
	Montane systems may experience more rapid changes in phenology	Munson and Sher (2015)
Wildfire	Increased fire frequency	Embrey et al. (2012), Hurteau et al. (2014), Hansen and Phillips (2015), Palmquist et al. (2018)
	Fuel dries earlier in year, lengthening fire season	Hurteau et al. (2014), Rocca et al. (2014)
	More high severity fires and mega-fires	Hurteau et al. (2014), Davies et al. (2016)

The Fourth National Climate Assessment, prepared by the U.S. Global Change Research Program in 2018, similarly offers the BLM a tool that could assist it in analyzing climate impacts across BLM-managed lands. The National Climate Assessment identifies climate impacts across the United States and includes region-specific analysis that the BLM could use to identify climate impacts across lands it manages. U.S. Global Change Research Program, *Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States*

(2018). Volume II focuses on national and regional impacts of human-induced climate change since the Third National Climate Assessment in 2014 and identifies likely future impacts.

Among other findings, the National Climate Assessment concludes that climate risks in the U.S. include impacts to the economy, such as property losses up to $1 trillion in coastal property destruction; loss of reliable and affordable energy supplies and damaged energy infrastructure; declines in agricultural productivity; loss of 2 billion labor hours annually by 2090 due to temperature extremes; recreational and cultural losses of wildlife and ecosystems such as coral reefs; decrease in water quality and security; diminished snowpack, sea level rise, and frequent flooding; increase in droughts, wildfires, and invasive species; and rise in deaths across vulnerable populations due to extreme weather events and heat waves. *See id.* at 25–32, 557–58.

The prior National Climate Assessment, released in 2014, explained that, in the Southwestern U.S., "increased warming, drought, and insect outbreaks, all caused by or linked to climate change, have increased wildfires and impacts to people and ecosystems." U.S. Global Change Research Program, *Third National Climate Assessment* (2014). For example, hotter temperatures have already contributed to reductions in snowpack, amplifying drought conditions in the Colorado River Basin, the Rio Grande, and other critical watersheds. For the northern Great Plains, which includes Wyoming, Montana, and North Dakota, the National Climate Assessment found that "communities that are already the most vulnerable to weather and climate extremes will be stressed even further by more frequent extreme events occurring within an already highly variable climate system." *Id.* Moreover, the report concludes that "[t]he magnitude of expected changes will exceed those experienced it the last century," and that "[e]xisting adaptation and planning efforts are inadequate to respond to these projected impacts." *Id.*

The BLM has referenced the National Climate Assessment in addressing climate impacts as part of its land use planning process. In its 2019 amendment to the Miles City Field Office Resource Management Plan, the BLM noted that the National Climate Assessment found temperatures in the Northern Great Plains region are likely to increase 2 to 4 degrees Fahrenheit by 2050 under low GHG emissions scenarios, increasing both drought and heat waves. Bureau of Land Management, Miles City Field Office Final Resource Management Plan Amendment/Final Environmental Impact Statement, 3–9 (2019).[15] The BLM further noted that "[t]he probability for more very hot days (those with maximum temperatures above 90°F) is expected to increase." *Id.*

As another model for examining impacts on public lands the BLM manages, a 2020 study examined climate impacts in 419 national parks, monuments, and recreation areas, managed by the National Park Service. The report documented ongoing impacts to these public lands across

[15] https://eplanning.blm.gov/public_projects/lup/116998/20004988/250005858/MCFO_FEIS_RMPA_Oct2019_508.pdf (last visited Aug. 1, 2025).

several categories, including glacial melt, reduced snow cover, drought, declines in Colorado River flows, wildfire increases, increased tree mortality, biome shifts, sea level rise, ocean warming, coral bleaching, ocean acidification, bird species loss, and wildlife habitat shifts. Patrick Gonzalez, *Human-Caused Climate Change in United States National Parks and Solutions for the Future*, Interdisciplinary Journal of Place-Based Conservation 36(2):188–210, 191–93 (2020) (App. Ex. 7).[16] If the BLM ever prepares a comprehensive review of climate impacts on public lands under its management, the findings of this report could inform the BLM's analysis of resources, species, and ecosystem services. Specific documented impacts already occurring on national park lands include a doubling of the area burned by wildfire across the western U.S. over the last century, including in Yosemite National Park; melting of glaciers in Glacier Bay National Park; doubling of tree mortality across the western U.S., including in Sequoia National Park; loss of bird species from Death Valley National Park; a shift of trees onto tundra in Noatak National Preserve; and sea level rise near the Statue of Liberty National Monument. *Id.* at 188. These impacts are highlighted below.

> Glacial melt. Human-caused climate change has caused two-thirds of the melting of 168,000 glaciers globally since 1991, including Muir Glacier in Glacier Bay National Park, which melted up to 640 meters (2100 ft) in depth from 1948 to 2000.
>
> Snow cover reduction. Across the western U.S., including sites in 11 national parks, climate change has reduced snowpack to its lowest level in 800 years. Climate change caused half of the reduction in snowpack from 1950 to 1999 in the western U.S., including at snow measurement sites in numerous national parks.
>
> Drought. National parks in the southwestern U.S. have experienced severe droughts detected, in part, from weather station measurements in national parks and driven, in part, by human-caused climate change.
>
> Colorado River flow decline. Climate change has caused half of a 16% decline from 1916 to 2014 of the flow of the Colorado River, which runs through Arches National Park, Canyonlands National Park, Glen Canyon National Recreation Area, Grand Canyon National Park, and Lake Mead National Recreation Area.
>
> Wildfire increase. Wildfire is a natural part of many ecosystems but excessive wildfire can damage them and kill people. For the western U.S. as a whole, including Yosemite National Park and numerous other national parks, climate change doubled the area burned by wildfire from 1984 to 2015, compared with the area of natural burning.
>
> Tree mortality. Across the western U.S., including sites in Kings Canyon, Lassen Volcanic, Mount Rainier, Rocky Mountain, Sequoia, and Yosemite National Parks, climate change doubled tree mortality from 1955 to 2007 due to drought, the most extensive bark beetle infestations in a century, and increased wildfire.

[16] https://escholarship.org/uc/item/9443s1kq (last visited Aug. 1, 2025).

Biome shifts. By moving warmer conditions upslope and farther north, climate change has shifted biomes (major vegetation types) at sites around the world, including in at least two U.S. national parks, Yosemite National Park and Noatak National Preserve.

Sea level rise. Tidal gauges have detected significant increases in sea level in or near national parks: 33 cm (13 in.) since 1854 in Golden Gate NRA, San Francisco, California, which hosts the tidal gauge with the longest time series in the Western Hemisphere; 42 cm (17 in.) since 1856 at New York City, near the Statue of Liberty National Monument; and 32 cm (13 in.) since 1924 at Washington, D.C., near the Jefferson Memorial and other national parks.

Ocean warming. Measurements of sea surface temperature from ships and buoys around the world, many offshore from US national parks, have detected a global average increase of 0.7 ± 0.1ºC (1.3 ± 0.2ºF) from 1900 to 2016 caused by human-caused climate change. Temperatures in the California Current of the Pacific Ocean, off the coast of Channel Islands National Park, Point Reyes National Seashore, and other parks, increased 0.8 ± 0.2ºC (1.4 ± 0.4ºF) from 1920 to 2016.

Coral bleaching. The hotter ocean temperatures of climate change bleached and killed corals in the National Park of American Samoa in 2015 and 2017. Climate change bleached and killed up to 80% of coral reef area at sites in Biscayne NP, Buck Island Reef National Monument, Salt River Bay National Historical Park and Ecological Preserve, Virgin Islands NP, and Virgin Islands Coral Reef National Monument in 2005.

Ocean acidification. Increased atmospheric CO_2 concentrations from human activities are raising the acidity of ocean water as the CO_2 dissolves in the water and forms carbonic acid. Analyses of water across the Pacific Ocean, including off the coast of Cabrillo National Monument, show that CO_2 from human sources increased acidity 25%–40% (–0.10 to –0.15 pH) between the preindustrial era (ca. 1750) and the 2000s.

Bird species losses. In Death Valley National Park, Joshua Tree National Park, Mojave National Preserve, and adjacent federal lands, field research detected an average net loss of 18 bird species (43% of bird species richness) between the periods 1908–1968 and 2013–2016 (Iknayan and Beissinger 2018).

> Wildlife shifts. In Yosemite National Park, field research found that climate change shifted the ranges of the pika (Ochotona princeps) and other small mammal species 500 meters (~1600 ft) upslope from 1920 to 2006. Analyses of Audubon Christmas Bird Count data across the U.S., including sites in numerous national parks, found that climate change shifted the average winter range of 254 bird species northward 30 ± 17 km (19 ± 11 mi) from 1975 to 2004.

Id. at 191–93.

These studies, published by national climate science bodies, academic institutions, and peer reviewed researchers, demonstrate ample literature and existing methodologies that could inform any future analysis by the BLM of climate impacts on public lands under its management. This body of research shows that climate change caused by GHG emissions is having, and will continue to have, a profound and direct impact on federal public lands. Interior has an obligation to consider these changes when analyzing proposed projects under NEPA.

C. The IFR omits any express obligation to consider effects relating to environmental justice.

Environmental justice has played a key role in NEPA reviews for decades. 89 Fed. Reg. at 35540 ("Agencies have decades of experience integrating consideration of environmental justice in their NEPA reviews"). The purposes of NEPA align closely with the goal of ensuring greater consideration of environmental justice concerns, as articulated in the definition of "environmental justice" in CEQ's 2024 regulations:

> Environmental justice means the just treatment and meaningful involvement of *all people* . . . in agency decision making and other Federal activities that affect human health and the environment so that people are fully protected from disproportionate and adverse environmental effects (including risks) and hazards . . . have equitable access to healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

Id. at 35575 (emphasis added); Council on Environmental Quality, "National Environmental Policy Act Implementing Regulations Revision; Phase 2 Final Rule Response to Comments" (Apr. 2024) at 58 ("references to environmental justice reflect and advance NEPA's statutory objectives, text, and policy statements").

The core principles of environmental justice are embedded in the statutory language and purpose of NEPA. The statute strives "to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare" of people; establishes "the continuing policy of the Federal Government" to "assure for *all Americans* safe, healthful, productive, and esthetically and culturally pleasing surroundings" and to "preserve important historic, cultural, and natural aspects of our national heritage;" and "recognizes that *each person* should enjoy a healthful environment." 42 U.S.C. §§ 4321, 4331(a), (b)(2), (b)(4), (c) (emphasis added). CEQ explicitly agreed. *See* Council on Environmental Quality, "National Environmental

Policy Act Implementing Regulations Revision; Phase 2 Final Rule Response to Comments" (Apr. 2024) at 55 ("CEQ agrees that the environmental justice-related provisions of the rulemaking advance NEPA's statutory policies, which include avoiding environmental degradation; preserving historic, cultural, and natural resources; and attaining the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.").

Addressing environmental justice in NEPA reviews is consistent with longstanding CEQ policy and agency practice. CEQ issued guidance on how to integrate environmental justice concerns into NEPA reviews nearly 28 years ago. *See* Council on Environmental Quality, *Environmental Justice: Guidance Under the National Environmental Policy Act* (1997). The guidance reiterates that "attainment of environmental justice is wholly consistent with the purposes and policies of NEPA," and that "[e]nvironmental justice issues encompass a broad range of impacts covered by NEPA." *Id.* at 7–8. The Guidance directs agencies how to address and consider environmental justice considerations at every stage of the NEPA review process. *Id.* at 10–17.

Other federal agencies, such as EPA, have published guidance on incorporating environmental justice in NEPA reviews. U.S. Environmental Protection Agency, *Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses* (1998). Some agencies, such as the Department of Transportation and the Department of Interior, have strategies for addressing environmental justice in NEPA processes. *See, e.g.*, Secretary Pete Buttigieg, DOT Order 5310.2C, *U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (2021); Secretary Deb Haaland, Secretarial Order 3399, *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process* (2021); Dep't of Defense, Strategy on Environmental Justice (1995). In addition to specific agency guidance and strategy, the NEPA Committee and Interagency Working Group released a 2016 report on Promising Practices for Environmental Justice Methodologies in NEPA Reviews to disseminate best practices across the federal government for engaging with and protecting communities facing environmental injustice during the NEPA process. That report was based on four years-worth of researching and analyzing the interaction of environmental justice and NEPA, compiling methodologies gleaned from agency practices. The Working Group also released the 2019 Community Guide to Environmental Justice and NEPA Methods to aid communities in participating in the NEPA process. The Guide states:

> Many minority and low-income communities have been subject to multiple environmental and social impacts. Because these impacts in combination with potential new impacts can produce adverse and disproportionate effects on minority populations and low-income populations, NEPA review of a proposed action should address the history or circumstances of a particular community or population, the

particular type of environmental or human health impact, and the nature of the proposed action.

Federal Interagency Working Group on Environmental Justice & NEPA Committee, *Community Guide to Environmental Justice and NEPA Methods* 3–4 (2019).

Courts have repeatedly recognized that agencies must consider environmental justice impacts. *Mid States Coal.*, 345 F.3d at 541; *see also Sierra Club*, 867 F.3d at 1368 (acknowledging that federal agencies are required to include environmental justice analysis in NEPA reviews); *Coliseum Square Ass'n, Inc. v. Jackson,* 465 F.3d 215, 232 (5th Cir. 2006) (same); *Trenton Threatened Skies, Inc., v. F.A.A.*, 90 F.4th 122, 138 (3rd Cir. 2024) (stating agencies "must consider designs or alternatives that will avoid or minimize disproportionately high and adverse impacts on low-income communities or communities of color"). Courts have not hesitated to find NEPA reviews deficient where agencies did not properly assess the environmental justice implications of their actions. *See, e.g.*, *City of Port Isabel v. FERC*, 111 F.4th 1198, 1207–10 (D.C. Cir. 2024) (holding the agency should have issued a supplemental EIS to address its new environmental justice analysis and conclusions); *Vecinos*, 6 F.4th at 1330–32 (remanding environmental impact statement because the agency's environmental justice analysis was deficient); *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 255 F. Supp. 3d 101, 140 (D.D.C. 2017) (remanding an environmental assessment for providing inadequate analysis of environmental justice implications of crude oil pipeline).

The 2024 CEQ regulations cemented the requirement to consider environmental justice impacts in NEPA reviews, giving agencies a definition and direction on how to weigh environmental justice considerations during the NEPA process where they arise. 40 C.F.R. §§ 1502.16, 1502.14(f), 1508.1(o). The inclusion of environmental justice in CEQ's regulations was supported by a chorus of public comments.[17] The explicit inclusion of environmental justice consideration in the regulations stood up when challenged in court. *Iowa v. Council on Env't Quality*, 765 F. Supp. 3d at 886 (including environmental justice considerations is within CEQ's "zone of authority").

However, in February, CEQ rescinded its NEPA regulations. In its wake, CEQ released a memorandum to the heads of federal agencies providing guidance on compliance with NEPA. In addressing President Trump's revocation of Executive Orders 14096 and 12898 (the Executive

[17] CEQ received many comments during the public comment period expressing support for more specific provisions to address environmental justice concerns. Inclusion of specific provisions on how to consider the issue was "long overdue, given the centuries of environmental dangers, toxins, public health implications, quality of life impacts, and unjust practices that perpetuate environmental violence on communities across the country." Letter from GreenLatinos and WE ACT for Environmental Justice, to Council on Env't Quality (Sept. 29, 2023); Letter from Abre' Conner, NAACP to Council on Env't Quality (Sept. 29, 2023) ("Black communities are often sacrifice zones for decisions that undergo a NEPA process").

Orders directing agencies to address environmental justice), the memorandum stated, "NEPA documents should not include an environmental justice analysis, to the extent this approach is consistent with other applicable law." CEQ, Memorandum Implementation of the National Environmental Policy Act, at 5. As explained above, declining to address environmental justice is not consistent with applicable law.[18] Such guidance not only undermines the core purposes of NEPA, but it also contradicts decades worth of agency practices and established case law. This Agency fails to provide any guidance on how to address NEPA's purpose of assuring "for *all Americans* safe, healthful, productive, and esthetically and culturally pleasing surroundings," by considering environmental justice. 42 U.S.C. § 4331(b)(2) (emphasis added). The Agency must provide an explanation for why it chose not to mention environmental justice, an aspect of NEPA processes for decades.

Failure to consider environmental justice in NEPA reviews frustrates the core purpose of NEPA, is arbitrary and unexplained, and goes against longstanding agency practice and case law. By not mentioning environmental justice or even cumulative impacts in the IFR or Handbook, the Agency is left without a clear direction on how or whether to address environmental justice impacts from agency action. This inevitably will leave Agency decisions vulnerable to legal challenges if they do not address environmental justice in its NEPA reviews. We strongly urge you to adopt the language in CEQ's 2024 NEPA regulations as it relates to environmental justice to avoid future litigation and delays.

D. The Agency has adopted limits on the scope of effects the Agency must consider that are not consistent with the statute.

In addition to omitting the features of the effects analysis just discussed, the Agency has included a number of other provisions that purport to narrow the effects that must be considered. These provisions largely restore language from the 2020 CEQ regulations—language that CEQ promptly discarded as inappropriate or confusing. The Agency has not explained why restoring these provisions makes sense nor has it engaged with CEQ's explanation for why these limitations are inappropriate.

Limiting consideration to the action or project at hand. To start, in multiple places, the Agency has suggested that it will limit its consideration to the environmental effects of the "project at hand." DOI Handbook 6.1(q). To the extent this means to eliminate consideration of indirect effects or cumulative effects, this is unsound for the reasons discussed above. If this is meant to confirm only that the focal point for environmental review is the action or project at hand, then that is unobjectionable. But, as with other additions made in the 2020 regulations, this addition is confusing and unnecessary. And it may also be incomplete. As the Supreme Court just made clear, it is not always sufficient to focus on the "project at hand." To take just one example,

[18] That applicable law also responds to the Agency's suggestion that rescission of environmental justice focused executive orders would make it "appropriate to remove" certain provisions. 90 Fed. Reg. at 29501.

"in certain circumstances, other projects may be interrelated . . . to the project at hand" and thus must be considered. *Seven County*, 145 S. Ct. at 1517. In those circumstances, limiting the analysis to the project at hand would render the environmental review deficient. More fundamentally, such a categorical approach to environmental review never could be appropriate. Agencies always must consider at least "those effects" that "are relevant to the agency's decisionmaking process." *Id.* at 1516; *see also id.* at 1513, 1514 n.4. If effects other than those from the "project at hand" are relevant to that determination, then of course the Agency must consider them. The absence of any regulatory direction on this point will breed confusion and contention.

Limiting effects to generally exclude those that are "remote in time, geographically remote, or the product of a lengthy causal chain." The Agency proposes restoring language from the 2020 CEQ regulations that "generally" excludes effects that "are remote in time, geographically remote, or the product of a lengthy causal chain." DOI Handbook § 6.1(j)(2). Here again, CEQ quickly removed this language because it "may unduly limit agency discretion" and "stating them as categorical rules that limit effects" is in tension with the statute. 87 Fed. Reg. at 23466. Indeed, CEQ's view was well-founded, as the Supreme Court recently declined to adopt this kind of categorical rule: The Court explained that environmental effects "may fall within NEPA even if those effects might extend outside the geographical territory of the project or might materialize later in time." *Seven County*, 145 S. Ct. at 1515. The other touchstones the Court emphasized for NEPA review—relevance to the agency's decisionmaking and consideration of its regulatory authority, *see* 145 S. Ct. at 1513, 1514 n.4, 1516—likewise do not gel with this categorical rule. If an effect is remote in time, geographically remote, or the product of a lengthy causal chain but sits comfortably within the agency's regulatory authority and would be relevant to its decisionmaking, then it must still be considered, even after *Seven County*.

Limiting effects to exclude "those effects that the agency has no ability to prevent due to the limits of its regulatory authority, or that would occur regardless of the proposed action." The Agency also proposed to restore language from the 2020 CEQ regulations that excludes consideration of "effects that the Agency has no ability to prevent due to the limits of its regulatory authority, or that would occur regardless of the proposed action." DOI Handbook § 6.1(j)(2). This addition should be removed for the same reason the prior addition should be: The 2022 CEQ regulations removed this language as "unduly limit[ing] agency discretion" and because this kind of "categorical rule[]" is in tension with NEPA's statutory requirements. 87 Fed. Reg. at 23466. For all the same reasons just discussed, *Seven County* does not dictate the inclusion of this language. It merely repeated the discussion from *Public Citizen*—a feature CEQ already accounted for in its previous iteration of the rules—and did not purport to adopt a categorical rule. Moreover, the categorical rule the Agency adopts here does not match up with the Court's analysis, which appears to have been limited to those circumstances where the agency had "no regulatory authority over . . . separate projects" and it was clear "[o]ther agencies possess authority to regulate those separate projects." *Seven County*, 145 S. Ct. at 1516. In those

circumstances, the agency's regulatory authority may be a relevant limit, but that decision does not support the categorical rule that agencies are permitted to limit their review even where no other agencies would regulate a separate project. And again, what matters is not any narrow sense of regulatory authority, but rather the set of considerations that might inform the agency's decisionmaking.

The Agency has also appended an exclusion of effects relevant to projects "initiated by a third party." ." DOI Handbook § 6.1(j)(2) . To the extent that is meant to exclude categorically an analysis of all induced effects, that marks a dramatic change from how agencies have analyzed effects since NEPA's passage, and is sharply in tension with the statute itself, for the reasons explained above. The Agency cannot completely transform the scope of NEPA, let alone do so without any explanation. And certainly the Supreme Court's recent decision is not a basis for such a radical turnaround. Even if *Seven County* gestured at declining to consider such effects where the record left doubt about whether they would occur, 145 S. Ct. at 1515–16 ("the project at issue *might* lead to construction or increased use of a separate project" (emphasis added)), an Agency still might need to consider such effects where those effects are so certain that the "separate project" cannot be said to "break[] the chain of proximate causation," *id.* After all, in traditional proximate causation analysis, the causal chain does not break where the later actions down the causal chain are sufficiently predictable at the time the action being considered took place. W. Page Keeton et al., *Prosser and Keeton on Law of Torts* 273, 276–77 (5th ed. 1984); Restatement (Third) of Torts § 34; Restatement (Second) of Torts §§ 440–443. And in any event, this categorical approach would have to give way where the Agency was called upon to account for the actions third parties might take in response.

Scope of Analysis provision. The Agency ultimately provides that "[t]o the extent it assists in reasoned decision making," the Agency "may, but is not required to by NEPA, analyze environmental effects" that fall outside the limits just discussed. DOI Handbook §§ 1.5(d)(3), 2.3(b)(3). Perhaps it is encouraging that the Agency leaves the door open to doing more than what it views as the bare minimum. Even so, the provision surfaces the fundamental incoherence of the Agency's approach. If the analysis of such effects "assist[s]" in "reasoned decision making," then by definition the Agency must do that analysis. DOI Handbook §§ 1.5(d)(3), 2.3(b)(3). And if these categorical rules are allowing the Agency to avoid considering effects that might be useful to it, they can have no place in an appropriate implementation of NEPA. *See Marsh*, 490 U.S. at 371; *accord Seven County*, 145 S. Ct. at 1513.

X. The Agency Omits Important Features Of The Prior Regulations That Guided The Alternatives Analysis.

The "alternatives" analysis has long constituted "the heart" of NEPA review. 40 C.F.R. § 1502.14; C*ity of Los Angeles v. F.A.A.*, 63 F.4th 835, 843 (9th Cir. 2023) ("Consideration of alternatives 'is the heart of the [EIS]' and agencies should '[r]igorously explore and objectively evaluate all reasonable alternatives.'"). Without a robust analysis of alternatives, the NEPA

process becomes a process documenting the effects of a "done deal" rather than contributing to a decisionmaking process. 89 Fed. Reg. at 35502. The Agency's approach to alternatives is deficient in several respects.

As discussed above, the Agency has injected unexplained discretion and expert judgment into its rules for the alternatives analysis; whatever discretion the Agency has to implement NEPA, it must, of course, comply with the statute and thus is obligated to address any "feasible alternatives." *See Seven County*, 145 S. Ct. at 1511, 1513.

The Agency also has omitted key aspects of CEQ's regulations that make the promise of a meaningful alternatives analysis real, without offering any explanation about why it made sense for the Agency to deviate from long-standing and well-settled standards

To start, the Agency has omitted the acknowledgment that this analysis is at the "heart" of NEPA review. 40 C.F.R § 1502.14. That language appeared in the original CEQ regulations, and as CEQ recently explained in the 2024 regulations when it restored that language, doing so "emphasizes the importance of the alternatives analysis" and reflects that a number of courts have "quoted that language . . . in stressing the importance of the alternatives analysis." 89 Fed. Reg. at 35502. Indeed, as the Supreme Court just confirmed, whether the agency properly "has addressed . . . feasible alternatives" is among the issues that is so critical that courts must play a role in ensuring compliance. *See Seven County*, 145 S. Ct. at 1511. The Agency should include the language here or explain why it chooses not to.

Second, the Agency also has omitted the requirement that the agency "[r]igorously explore and objectively evaluate alternatives." 40 C.F.R. § 1502.14(a). Including that standard is important because it helps "ensure agencies conduct a robust analysis of alternatives and their effects, rather than a cursory, box-checking analysis." 89 Fed. Reg. at 35503. It also aligns with "a standard that agencies have decades of experience applying in the analysis of alternatives." *Id*. at 35503. Indeed, CEQ has directed agencies to apply this standard since at least April 1970. Interim Guidelines § 7(a)(iii). The Agency should make clear that this familiar standard continues to apply to alternatives analysis, instead of leaving it ambiguous.

Third, the Agency has omitted authorization to include in the analysis "reasonable alternatives not within the jurisdiction of the lead agency." 40 C.F.R. § 1502.14(a). CEQ had recognized that there are certain circumstances where those kind of alternatives would be relevant and wanted to make clear to agencies that they had the discretion to consider them. Cases support this analysis, *see, e.g.*, *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 835–36 (D.C. Cir. 1972), and it can be particularly important to do so when "agencies are considering program-level decisions or anticipate funding for a project not yet authorized by Congress," 89 Fed. Reg. at 35503. While most of the time, we are focused on reasonable alternatives that are within the lead agency's jurisdiction, there are situations in which it is reasonable to evaluate alternatives outside the agency's jurisdiction, not just those discussed by CEQ, but also others. The Agency should not rescind this requirement.

Fourth, the Agency also has omitted the requirement that the Agency identify the "environmentally preferrable alternative." 40 C.F.R. § 1502.14(f). This information is "helpful for decision makers and the public" because it can allow "public comment on th[e] determination" and facilitate a determination of whether the agency has "adequately explained its conclusion." 89 Fed. Reg. at 35504. This improves the "transparency of the agency's decision-making process" and ensures that "agencies make informed decisions regarding actions that impact the environment." *Id*. CEQ also has confirmed that such a requirement does not "result in unnecessarily broad and time-consuming environmental reviews." *Id*. That's because CEQ's "regulations have always required agencies to identify the environmentally preferrable alternative" and thus agencies have "decades of experience" applying that standard. *Id*. And identification of the environmentally preferable alternative does not mean that the Agency must adopt this alternative. But it does mean that the public will understand where a different choice is made and the Agency will have an opportunity to explain why. This is yet another example where the Agency has not contended with CEQ's explanation.

Fifth, Interior should revise its procedures to confirm that EAs and EISs must analyze a no action alternative. DOI affirmatively states that a no action alternative is not required for EAs. DOI Handbook, app. 3, at 12; DOI Handbook § 1.5(b)(i) (elements of EA include discussing "effects of the proposed action and any action alternatives," but no mention of impacts from no action). For EISs, it is unclear from the new Handbook whether a discussion of impacts from a no action alternative would be required. *See* DOI Handbook § 2.3(a) (requiring statement on "effects of proposed action" and impacts from "a reasonable range of alternatives to the proposed action," but no mention of no action alternative); *compare* 43 C.F.R. § 46.415(b)(1) (2024) (referencing no action alternative in EIS). Attempting to prepare a NEPA analysis without a no action alternative, or some assessment of the environmental baseline, would make it difficult to clearly assess the impacts from each action alternative. A NEPA analysis cannot rationally assess a project's impacts without first establishing a valid baseline. *Oregon Nat. Desert Ass'n v. Rose*, 921 F.3d 1185, 1190 (9th Cir. 2019) ("'Without establishing the baseline conditions' before a project begins, 'there is simply no way to determine what effect the project will have on the environment and, consequently, no way to comply with NEPA.'" (quoting *Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1101 (9th Cir. 2016))).

Finally, the IFR also rescinds prior regulation 46.420, which required that in considering an applicant's proposal, the Agency's purpose and need (rather than the applicant's) determines the range of alternatives, and "the goals of the [applicants] must not be confused with the bureau's" purpose and need. The new Handbook replaces this with a statement that the purpose and need "will be informed by the goals of the applicant." DOI Handbook § 2.2. Interior should reinstate the prior language, or confirm that the same rule applies: an agencies' interests are not coextensive with those of applicants, and agencies should not limit their scope of reasonable alternatives to those supported by the applicant's goals, where other alternatives could serve the agency's purposes.

XI. The Agency Has Adopted An Impermissible Approach To Significance.

Without any explanation, the Agency has abandoned the long-standing factors of context and intensity that have informed the question whether an "adverse effect of the proposed action is significant." 40 C.F.R. § 1501.3(d). The question of whether a proposed action has "significant impacts" is among the most consequential and controversial issues that arise in NEPA processes and litigation. Agencies and the public have become familiar with the long-standing criteria for significance and have used them systematically as a roadmap to evaluate a proposed action. In reaffirming the utility of these criteria just last year, CEQ explained that they did not "expand the scope of NEPA review," but rather "assist[ed] agencies in determining the appropriate level of NEPA review for their proposed actions by focusing their review on the critical factors in determining significance." 89 Fed. Reg. at 35464. The prior approach to assessing significance has been useful and should not be abandoned.

In addressing significance here, the Agency has adopted a version of what appeared in the 2020 regulations. *See* 85 Fed. Reg. at 43360; *compare* DOI Handbook § 1.2(b). CEQ already has explained, in detail, why the 2020 approach to significance should be abandoned. *See* 89 Fed. Reg. at 35464–69. To the extent the Agency has followed the 2020 regulations, its approach reflects the same omissions, confusion, and other problems that the 2024 regulations addressed. The Agency should restore those omitted components from the 2024 regulations, or at least explain how it has resolved the problems with the 2020 regulations that CEQ later solved.

To take one example, the agency has omitted the consideration of "global" contexts. That departs from the recently revoked CEQ rules, which directed agencies to evaluate "the potential global, national, regional, and local contexts" of impacts to determine the appropriate level of NEPA review. 40 C.F.R. § 1501.3(d)(1). The use of the word "global" in this provision reflects the statute itself, which calls for agencies, to the "fullest extent possible," to:

> recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment.

42 U.S.C. § 4332(2)(I); *id.* § 4346b (authorizing "expenditures in support of international activities"); *see also* 44 Fed. Reg. 1957 (Jan. 9, 1979) (executive order instructing agencies to consider effects of action on "the global commons" and the "environment of a foreign nation"). While the focus of NEPA is "fulfill[ing] the social, economic, and other requirements of present and future generations of Americans," 42 U.S.C. 4331(a), NEPA recognizes the extraterritorial impacts of federal government actions—on climate, water, air pollution, and biodiversity among other things—ultimately impact Americans as well as everyone else. NEPA's application to federal actions that result in environmental impacts outside U.S. borders has long been settled.

See, e.g., Env't Def. Fund v. Massey, 986 F.2d 528, 533 (D.C. Cir. 1993). In including the word "global" in this provision, CEQ explained the rule's description of context was "consistent with the decades of experience agencies had implementing the 1978 regulations." 89 Fed. Reg. at 35465.

The Agency omits this reference to "global," and there is a repeated and consistent emphasis on the impacts of actions to "Americans," as if the impacts to the global commons are irrelevant or that the environment stops at the U.S. border. That approach does not square with the legal authorities just discussed, and it is foreclosed by the recent statutory amendments which make clear that an agency need not consider a decision only where its "effects" are "located *entirely* outside of the jurisdiction of the United States." 42 U.S.C. § 4336e(10)(b)(vi) (emphasis added). While the new standards appear to at least offer discretion to agencies to consider extraterritorial impacts, we urge you to provide greater clarity on this important issue so that key extraterritorial impacts are not omitted

That is not the only way in which the Agency's rule departs from the approach CEQ previously chose to assess significance. The Agency should explain why it has departed from the prior CEQ regulations in other respects, too. At a minimum, the agency should restore some of the overarching principles—for example, the notion that "agencies shall not offset an action's adverse effects with other beneficial effects to determine significance." 40 C.F.R. § 1501.3(d). Moreover, the agency fails to include consideration of criteria specifically identified in NEPA, itself, such as "important historic, cultural, and natural aspects of our national heritage," "renewable resources," impacts to "long-term productivity," and the "worldwide and long-range character of environmental problems." 42 U.S.C. § 4331(4), (6); *id.* § 4332(2)(C)(iv), (F).

In any event, the Agency's approach here also adds novel considerations that were not present in previous versions of the CEQ regulations. For example, the Agency directs the consideration of "[e]conomic effects" and the "[e]ffects on the quality of life of the American people." DOI Handbook § 1.2(b). Given the many criteria the Agency has omitted, these are particularly inexplicable additions. In the past, CEQ has made clear that "economic [and] social" effects stand alone as effects that "by themselves do not require preparation of an environmental impact statement." 40 C.F.R. § 1502.16(b). Indeed, these are the sort of effects that should not be given "a higher priority than other effects" in the analysis. 89 Fed. Reg. at 35510. As to focusing the Agency's attention on the "quality of life of the American people," that criterion is as unobjectionable as it is unhelpful. An overarching goal of NEPA is, of course, to improve the quality of life of Americans, and thus additional guidance has been helpful to channel the types of factors the Agency should assess in evaluating significance. To that end, many of the factors agencies previously would look at to determine significance—and which have been omitted here—no doubt inform the quality of life of the American people. To name just a few, the degree to which "the action may adversely affect unique characteristics of the geographic area" informs how an action will impact the American people. 40 C.F.R. § 1501.3(d)(2)(ii). As does the degree to which the "action may adversely affect communities with environmental justice concerns"

informs how an action will impact the American people. 40 C.F.R § 1501.3(d)(2)(vii). So too with others. Accordingly, the Agency should restore the more granular guidance CEQ once provided or explain why it has not done so.

XII. The Agency Has Adopted An Impermissible Approach To Reviewing Connected Actions And Long-Term/Multi-Phase Actions.

A. The Agency's explanation for when a supplemental EIS is required is inappropriate.

Both CEQ and Interior have long required that an agency will prepare "supplements to either draft or final" EISs if a "major Federal action is incomplete and ongoing," and "the agency makes substantial changes to the proposed action that are relevant to environmental concerns" or there "are substantial new circumstances or information about the significance of adverse effects that bear on the analysis." 40 C.F.R. § 1502.9(d); 43 C.F.R. § 46.415(C)(2) (2024) (incorporating CEQ's supplementation regulations by reference). The Agency has incorporated this provision but has included several changes. The Agency should revert to CEQ's formulation of the supplemental NEPA obligations..

First, the Agency swapped "incomplete and ongoing" with "remains to occur." DOI Handbook § 3.6(a). Just last year, CEQ rejected the use of "remains to occur"—and switched back to "incomplete and ongoing," precisely because "remains to occur" was "vague" and the latter phrase provided "more clarity." 89 Fed. Reg. at 35499. The Agency should not reintroduce that confusion.

Second, the Agency qualifies its obligation to prepare a supplemental document, explaining that it must do so only if, in "its discretion," it determines there are "substantial new circumstances or information about the significance of the adverse effects that bear on the proposed action or its effects." DOI Handbook § 3.6(a)(1).[19] This is on top of the discretion the Agency claims, discussed above, about whether the action is a major Federal action in the first place, *see* DOI Handbook § 1.1(a)(6).

But the statute leaves no room for such discretion. As the Supreme Court explained, the "decision whether to prepare a supplemental EIS is similar to the decision whether to prepare an EIS in the first instance." *See Marsh*, 490 U.S. at 374 (citing 42 U.S.C. § 4332(2)(C)). If this new information shows that the "remaining action will 'affec[t] the quality of the human environment" in a way "not already considered, a supplemental EIS must be prepared." *Id*. The mandatory nature of the obligation is confirmed by the 2023 amendments to NEPA, which

[19] The agency does not explain its shift from "on the analysis" to "on the proposed action or its effects." That uses different language than appears in the parallel statutory provision, 42 U.S.C. § 4336(b), and so may cause confusion. To the extent that was meant to signal any substantive difference, the agency has not explained that, and it would be impermissible.

incorporated this standard to describe when supplementation of programmatic environmental documents is required. *See* 42 U.S.C. § 4336b(1); 89 Fed. Reg. at 35499.

The Agency also has omitted the catchall provision that permits the Agency to "prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so." 40 C.F.R. § 1502.9(d)(2). The Agency has not explained the basis for that omission, and it should retain this authority to develop a supplemental EIS when it would be appropriate.

Finally, the new Handbook grants bureaus discretion to significantly reduce—or even eliminate entirely—public participation concerning supplements. The Agency is rescinding its previous regulation requiring it to publish and circulate supplements in the same way it published initial EISs and EAs, *see* 43 C.F.R. § 46.415(C)(2) (2024); 40 C.F.R. § 1502.9(d) (2024). The Handbook explicitly removes this requirement and instead provides that "the Responsible Official may publish or circulate a supplement as appropriate to the scope of the supplement and the proposed action." DOI Handbook § 3.6(b). The agency has not explained why public participation in supplemental NEPA analysis is less important than in initial analysis, and, as previously noted, there is no distinction. *See Marsh*, 490 U.S. at 374. This reduction in the public's role is therefore unlawful and arbitrary for those reasons articulated above.

B. The Agency has adopted an inappropriate approach to segmentation and connected actions.

Previous iterations of the CEQ regulations have long provided that the "agency shall, in a single review, proposals or parts off proposals that are related closely enough to be, in effect, a single course of action." 40 C.F.R. § 1501.3(b); *see also* 43 Fed. Reg. at 55992, 56005 (1978 regulations). CEQ also had established a natural corollary to that principle, which is that an "agency shall not avoid a determination of significance by . . . segmenting an action into smaller component parts." 40 C.F.R. § 1501.3(b). As CEQ explained, that also is a "longstanding principle" that is relevant to the preparation of all environmental documents. 89 Fed. Reg. at 35462; *see also id.* 35462–63 (collecting caselaw support for this anti-segmentation principle).

The Agency has omitted these critical, common-sense provisions, without explaining why. That omission, coupled with its emphasis on considering only the project or action at hand, risks the Agency declining to take the comprehensive approach to NEPA review that long has been required. That would be error for the reasons discussed above. *See also Seven County*, 145 S. Ct. at 1517. The Agency should restore these important provisions from the 2024 CEQ regulations or else explain why it has abandoned them.

Separate from the absence of these provisions, the Agency also has altered its definition of what constitutes a "connected action" for purposes of NEPA review. Under CEQ's most recent controlling regulation, the Agency must "consider whether there are connected actions, which are closely related Federal activities or decisions that should be considered in same NEPA review" and that

(1) [a]utomatically trigger other actions that may require NEPA review;
(2) [c]annot or will not proceed unless other actions are taken previously or simultaneously; or
(3) [a]re interdependent parts of a larger action and depend on the larger action for their justification.

40 C.F.R. § 1501.3(b).

Here, the Agency adopted a similar three-part definition of connected action, but it makes unexplained changes that could be understood to alter the scope of this obligation. The formulations the Agency chose were not present even in the 2020 regulations. 85 Fed. Reg. at 43332, and it is unclear what, if anything, these differences might suggest. These changes adopted without explanation or input highlight the arbitrariness of the Agency's approach to adopting final rules without notice and comment.

As to the "automatically trigger" provision, the Agency provides that the triggered action must "independently . . . require the preparation of additional environmental documents." DOI Handbook § 6.1(g)(1). The Agency has not explained this shift from an action that "may require NEPA review" to one that would "independently would require" NEPA review, but to the extent any change was intended, it should be rejected as unexplained. And regardless, the Agency should restore the previously used language to prevent any confusion.

On the second prong, the Agency has omitted the "will not" portion of the standard. DOI Handbook § 6.1(g)(1). Once again, the Agency has not explained this shift and whether it was intended to be substantive. But if this was meant to suggest that agencies can ignore those actions that would be allowed to proceed either way even if it is unlikely that they would do so, that shift has not been justified, and it would be unwarranted besides. As the Supreme Court just explained, it is enough that two projects may be "interrelated" in the sense that they only make sense if they both go forward, as in a "residential development . . . built at the same time as a ski resort." *Seven County*, 145 S. Ct. at 1517.

On the third prong, the Agency has utilized a different formulation using what appears to be non-substantive changes. The Agency should confirm that is so.

Further, the Handbook inappropriately limits the definition of "connected actions" to exclusively "federal" actions, meaning that a separate "non-federal" action, even if it closely intertwined with a proposed action, does not qualify as a "connected action." DOI Handbook § 6.1(g). This impermissibly narrows the application of the statutory term "action" in violation of the statutory command to construe the provision "to the fullest extent possible." 42 U.S.C. § 4332(1). It is also inconsistent the statutory definition of "major Federal action" which applies to actions that are not in their entirely federal. *See* 42 U.S.C. § 4336e(10) (providing that "major Federal action" applies to actions "subject to substantial Federal control and responsibility"). The agency's attempt to further narrow the application of "connected actions" is also inconsistent

with longstanding federal caselaw. *E.g.*, *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1319 (D.C. Cir. 2014).

C. Agencies have not guaranteed comment when they rely on a previously-prepared environmental impact statement.

In providing for the adoption of previously prepared environmental documents in cases where the later action is not "substantially the same" as the earlier action, the 2024 CEQ regulations required additional "public engagement . . . consistent with the requirements for the document type." 89 Fed. Reg. at 35521; 40 C.F.R. § 1506.3. That meant that, before adopting an EIS, the Agency was required to provide notice and seek comment.

The Agency no longer requires the public engage here, instead requiring comment only "to the extent that solicitation of comment will assist" the Agency "in expeditiously adapting the relied upon EIS." DOI Handbook § 3.1(b). For all the reasons discussed above, the Agency should require notice and comment on this type of environmental impact statement, too.

XIII. The Omission Of Standards For Mitigation Is Inappropriate And Unexplained.

Previous iterations of CEQ's NEPA implementing rules provided detailed direction as to how to properly consider the role of mitigation in the NEPA process. The issue is a critical one: properly employed, mitigation can reduce the extent of the environmental impacts to the point where effects are no longer significant enough to trigger an EIS. Alternatively, it can be utilized to reduce the severity of adverse impacts identified in an EA or EIS. Ensuring the integrity of such mitigation, holding agencies accountable to their promises to implement it, and analyzing it carefully is therefore critical to ensuring NEPA's admonition to fully imbue federal decision making with environmental awareness. 42 U.S.C. §§ 4321, 4331. While NEPA does not substantively require that adverse environmental impacts be mitigated, it does require consideration of mitigation. *Roberston*, 490 U.S. at 351 (1989) ("The requirement that an EIS contain a detailed discussion of possible mitigation measures flows both from *the language of the Act* and, more expressly, from CEQ's implementing regulations." (emphasis added)).

Consideration and disclosure of measures to mitigate adverse impacts has always been a key part of the NEPA process. *See, e.g.*, 40 C.F.R. § 1502.14(f) (1978) (requirements for discussing alternatives); § 1502.16(e)–(h) (1978) (requirements for discussing environmental effects); § 1503.3(d) (1978) (requirements for comments); § 1504.3(c)(2)(vi) (1978) (criteria for referrals); § 1505.3 (1978) (implementation standards). It is also the subject of extensive agency guidance and practice going back decades. *See, e.g.*, *Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact*, 76 Fed. Reg. 3843 (Jan. 21, 2011).

The latest version of CEQ's implementing regulations provided a detailed and helpful update to these provisions. For example, the 2024 CEQ regulations state that agencies "should, where relevant and appropriate" incorporate measures to address "significant human health and environmental effects" of their actions. 40 C.F.R. § 1505.3(b). Similarly, 40 C.F.R. § 1505.2(c) requires an agency to "state whether the agency has adopted all practical means to mitigate environmental harm . . . and if not, why not." Another provision directed that mitigation "shall" be implemented (for example, through conditions in permits or funding) where mitigation is established in a NEPA document "and committed as part of the decision." *Id*. § 1505.3(a).[20] Of particular note, CEQ's provisions recognized that in the circumstances where further environmental review is avoided "based on implementation of mitigation," it makes sense to make sure that it occurs. *Id*. § 1505.2(c). And so, it may be important that agencies "provide for monitoring to assure that their decisions are carried out." *Id*. § 1505.3(a). As CEQ confirmed, these provisions "do[] not impose any binding requirements on agencies, but rather codif[y] a portion of CEQ's longstanding position that agencies should, as a policy matter, mitigate significant adverse effects where relevant and appropriate." 89 Fed. Reg. at 35517.

The adoption of these revised rules was particularly valuable due to the inconsistencies in the way agencies handled mitigation. For example, some agencies built mitigation into the project itself and then failed to ensure that it ever occurred—meaning that the effects of the action were more significant and more adverse than ever considered by the agency or disclosed to the public. For example, the Forest Service and BLM, routinely have relied on EA project design "criteria" or "features," or other formulations to escape the obligation to enforce such measures during project implementation. Although these measures are described as part of the project and therefore not mitigation, they can still serve to limit the extent or duration of adverse effects and thus to support a finding of no significant impact. However, the agencies frequently waive many of these measures in project implementation, undermining both the spirit and letter of NEPA. The previous regulations were intended to put a stop to such abuses.

Features of this scaffolding and direction appear to have been retained. DOI Handbook §§ 1.3(e), 1.6, 2.3(a)(6), 6.1(m). But the Agency has not adopted all of the provisions in the prior CEQ regulations. To the extent the Agency has omitted key components of the prior regulations, that will leave the Agency yet again to figure things out on its own and leave the public in the dark about how effects are being mitigated and unsure about whether the mitigation will actually come to pass. Leaving such a vacuum in a critical component of NEPA implementation is

[20] As CEQ explained, because NEPA requires agencies to identify the "reasonably foreseeable environmental effects" of an action, "to the extent that identification assumes the implementation of mitigation measures to avoid adverse effects, it follows, in turn, that implementation of mitigation must also be reasonably foreseeable." 89 Fed. Reg. at 35518. This provision was upheld against a legal challenge. *Iowa v. Council on Env't Quality*, 765 F. Supp.3d at 887 ("Monitoring agency-chosen mitigation is directly related to the detailed statement CEQ is directed to regulate.").

inexplicable and the agency does not offer any justification for it in the IFR. The Agency must either restore the 2024 mitigation provisions or explain why a different approach is warranted.

XIV. The Agency Failed To Comply With NEPA Even Though Promulgation Of The IFR Is A "Major Federal Action" With Potentially Significant Impacts.

The IFR is procedurally defective in another way, insofar as the Agency did not comply with NEPA in issuing this rule—which is a major federal action with environmental impacts that need to be disclosed and considered in a NEPA document. The Agency has broken with precedent and offered an inadequate and arbitrary explanation for its actions.

NEPA requires all agencies of the federal government to prepare a "detailed statement" analyzing the environmental effects of, and reasonable alternatives to, all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). Historically, a "major federal action" upon which an EIS may be required included "new or revised agency rules [and] regulations." 40 C.F.R. 1502.4 (1978) ("Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations."); 40 C.F.R. § 1508.1(q)(2)(i) (2024) (major federal action includes "[a]doption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act"). As the leading treatise on NEPA states bluntly, "Federal agency rules and regulations are federal actions that require the preparation of an impact statement." § 8:31. *Rules and regulations*, NEPA Law and Litig. § 8:31 (2024). NEPA has been performed on the issuance of regulations since its inception. *See, e.g.*, *Calvert Cliffs' Coordinating Comm., Inc. v. U. S. Atomic Energy Comm'n*, 449 F.2d 1109 (D.C. Cir. 1971) (rules for licensing nuclear power plants); *Nat. Res. Def. Council, Inc. v. U.S. Dep't of the Interior*, 397 F. Supp. 3d 430 (S.D.N.Y. 2019) (interpretive rule declaring that the Migratory Bird Treaty Act's take prohibition does not apply to incidental takes was a major federal action)

Indeed, when CEQ first promulgated the original version of its implementing regulations, it prepared a special environmental assessment considering the impacts of its action; it did the same when it issued the 2024 revisions. 89 Fed. Reg. at 35552 (discussing history of preparing "Special EAs" for promulgation of NEPA rules). Both documents are attached.

In issuing the IFR, the Agency did not prepare an EA, EIS, or any NEPA documentation at all. Instead the IFR declares that the rule is does not "authorize" specific activities or projects and hence is not subject to NEPA. 90 Fed. Reg. at 29503. This justification makes no sense. No agency rule of general applicability authorizes specific projects, yet performing NEPA on rules has always been required and has in fact been commonplace.

Interior states that it is relying on a categorical exclusion for "Policies, directives, regulations, and guidelines [ ] that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either

collectively or case-by-case." 90 Fed. Reg. at 29503 (43 C.F.R. § 46.210(i)). This categorical exclusion does not apply.

As North Dakota argued (when Secretary Burgum was governor), "[r]ules that implement a change to an existing framework—for example, by 'revis[ing]' existing regulations—'qualify as substantive action' and 'meet the relatively low threshold to trigger some level of environmental analysis under [NEPA].'" Compl. ¶ 99, ECF No. 1, *North Dakota v. Dep't of the Interior*, No. 1:24-cv-124-DMT-CRH (D. ND. June 21, 2024) (quoting *California ex rel. Lockyer v. U.S. Dep't of Agric.*, 575 F.3d 999, 1013-14 (9th Cir. 2009). Because the IFR and Handbook changes "provide[ ] an overarching framework for multiple [Interior] programs," *id.*, a categorical exclusion may not be used.

Further, Interior offers no reasoned explanation for its conclusory statement that no extraordinary circumstances apply here. For example, the IFR narrows the required scope of NEPA reviews on issues such as disproportionately impacted communities, climate change, and public participation in numerous respects, which will "establish a precedent for future actions" with potentially significant environmental effects. 43 C.F.R. § 46.215(d); *see also*, *id.* §§ 46.215(c), (e).

Heartwood, Inc. v. U.S. Forest Serv., 230 F.3d 947, 954–55 (7th Cir. 2000) is not to the contrary. In *Heartwood*, the Seventh Circuit concluded that adoption of categorical exclusions for timber harvest on Forest Service land was not a major federal action for NEPA review purposes. On that record and those facts, that may have been so. But the IFR—combined with the revocation of CEQ's implementing regulations—is entirely another matter.

The IFR's potential environmental impacts are self-evident. Combined with the revocation of the CEQ rules, the IFR eliminates all of the direction to agencies that guide their implementation of NEPA. The entire premise of this effort is to meet explicit goals of expediting development and resource extraction projects as directed by the President's executive orders. *See, e.g.*, Executive Order 14154. The IFR is explicitly directed towards the Administration's effort to streamline federal approvals for consequential, high-impact projects like pipelines and energy generation, production, and transmission projects. Assuming that the premise of the IFR is correct—that it will expedite the approval and construction of many such projects with potential significant environmental impacts—then it unavoidably follows that the IFR itself will have significant environmental impacts that the Agency must consider and disclose pursuant to NEPA.

The Agency's promulgation of the IFR without preparing an EA or EIS that: (a) examines a reasonable range of alternatives; (b) has a statement of purpose and need that corresponds to the agencies' proposed action; (c) identifies the correct no action alternative baseline for comparing and assessing direct, indirect, and cumulative environmental effects; (d) uses high quality scientific information; and (e) examines the overarching direct, indirect, and cumulative environmental effects of the IFR violates NEPA and the APA.

XV. The Agency Failed To Comply With The Requirements Of The Endangered Species Act In Issuing The IFR.

Section 7(a)(2) of the ESA requires that each federal agency, in consultation with the U.S. Fish and Wildlife Service ("FWS") and/or the National Marine Fisheries Service ("NMFS"), ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of critical habitat of such species. 16 U.S.C. § 1536(a)(2). "Action is defined to include the promulgation of regulations; actions that may directly or indirectly cause modifications to the land, water, or air; and actions that are intended to conserve listed species or their habitat." 50 C.F.R. § 402.02.

If a federal agency determines that a proposed action—like issuance of a regulation—"may affect" listed species or critical habitat, the agency must engage in "formal consultation" with FWS and/or NMFS, depending on the species involved. 50 C.F.R. § 402.14. Courts have recognized that the "may affect" hurdle is extremely low, encompassing any possible effect, whether beneficial, benign, adverse, or of an undetermined character.

Formal consultation concludes with the preparation of a biological opinion by FWS and/or NFMS addressing whether the proposed action will jeopardize threatened or endangered species or result in the destruction or adverse modification of critical habitat and setting forth any necessary measures for avoiding, minimizing, and mitigating any adverse impacts. 16 U.S.C. § 1536(b). An action agency may avoid formal consultation by engaging in "informal consultation" with FWS and/or NMFS and obtaining a written concurrence that the project is not likely to adversely affect threatened or endangered species or critical habitat. 50 C.F.R. § 402.13(a).

The Agency's issuance of the IFR required consultation under the ESA because when combined with CEQ's revocation of its implementing regulations, it substantially weakens the environmental review process in many ways that affect listed species and their habitat, including by allowing the agencies to: (1) disregard and/or inadequately analyze direct, indirect, and cumulative impacts of proposed projects; (2) establish arbitrary limits on the completion of EAs and EISs, truncating and reducing the quality of those reviews; (3) gather no new data when preparing completing environmental reviews; (4) undercut the importance of analyzing a range of reasonable alternatives; (5) significantly expand the use of categorical exclusions when in fact adverse environmental impacts are likely; and other flaws as discussed in these comments.

But as far as commenters can determine, the Agency did not consult on the impacts of the IFR to protected species. The IFR says nothing about the issue at all, providing no explanation of a key issue. Nor is there any record of consultation that we are aware of. This failure violates the ESA and is arbitrary.

The Agency should suspend the effectiveness of the IFR until consultation is complete. This too is compelled by statute. Specifically, ESA Section 7(d) provides that after federal agencies initiate consultation on an action under Section 7(a)(2), but prior to completion of consultation, the agencies "shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section." 16 U.S. C. § 1536(d). The purpose of Section 7(d) is to maintain the environmental status quo pending the completion of consultation. While the Agency goes through the consultation process, it should take measures to ensure that this provision is satisfied.

XVI. The IFR Omits Important Safeguards Around The Preparation Of NEPA Documents By Applicants Or Contractors.

The IFR provides that the applicant, or contractors hired by the applicant or by the Agency, may prepare environmental documents under the Agency's supervision. 90 Fed. Reg. at 29504 (43 C.F.R. §§ 46.105, 46.107). In a sharp break from past practice, however, it is unclear whether the Agency has imposed any conflict-of-interest requirements on contractors. *See* 90 Fed. Reg. at 29504 (43 C.F.R. § 56.105(c)) (referring to vague professional integrity certification).

The omission of such protections, which previously were required, is never explained and hence is arbitrary and capricious. The Agency also inappropriately does not limit the type of environmental documents that an applicant or applicant-directed contractor may prepare.

CEQ regulations previously required that contractors preparing EISs would be hired by the lead agency, rather than allowing for them to be hired by the applicant, in order to reduce conflicts of interest. 40 C.F.R. §1506.5(c) (2019). Moreover, CEQ regulations required that such contractors sign a financial conflict of interest statement. *Id*. § 1506.5(c)(4). These requirements were updated and made even more robust in the 2024 amendments to the rules. 40 C.F.R. § 1506.5(c). For example, the 2024 CEQ regulations also required that environmental documents prepared by contractors include "the names and qualifications of the persons preparing environmental documents, and conducting the independent evaluation of any information submitted or environmental documents prepared by a contractor." § 1506.5(c)(3). In explaining the continued importance of conflict of interest statements when adopting regulatory changes in 2024, CEQ explained that "a conflict of interest would exist if a contractor possessed a direct financial interest in the project, for example if it entered into a contingency fee arrangement that provided for an additional payment if an agency authorized an action." 89 Fed. Reg. at 35524. The financial conflict of interest statement was even included in the weaker set of rules adopted in 2020. 40 C.F.R. § 1506.5(b)(4) (2020).

Because the Agency has not explained the basis for removing these protections, which existed to promote transparency and reduce conflicts of interest, their removal is arbitrary and capricious.

XVII. Certain Provisions Of The CEQ Regulations The Agency Has Retained Are Inconsistent With The Statute.

In several places, the Agency has retained provisions that appeared in the 2024 CEQ regulations and to which we previously have objected and/or continue to object as inconsistent with NEPA's requirements. Where the Agency has maintained versions of those provisions here, we incorporate our prior objections. *See, e,g.*, Letter from 328 organizations and tribal nations, to Council on Env't Quality (March 10, 2020); Letter from Environmental Organizations, to Council on Env't Quality (March 2, 2022); Letter from 88 organizations, to Council on Env't Quality (Sept. 29, 2023). We emphasize a few of the ways that the latest CEQ regulations are inconsistent with the statute and also describe objections to the way the Agency has reimplemented those requirements here.

A. The Agency cannot apply a categorical exclusion where it determines significant effects are avoided by mitigation or modification of the action.

CEQ's regulation provided that "[i]f extraordinary circumstances exist, the agency nevertheless may apply the categorical exclusion if . . . the agency modifies the action to avoid the potential to result in significant effects." 40 C.F.R. § 1501.4(b)(1). The Agency does not appear to have retained this authority in its codified regulations, 90 Fed. Reg. 29505–06, but it has gestured at continuing to exercise this authority in its Handbook, *see* DOI Handbook, app. 3, at 5.

To the extent the Agency has retained this approach to extraordinary circumstances review, it is inconsistent with NEPA's statutory structure. Where an action cannot be "excluded pursuant to" a categorical exclusion, the Agency must do at least an EA. 42 U.S.C. § 4336(b)(2). In finding extraordinary circumstances, the agency has determined that the action is no longer within the "category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment," 42 U.S.C. § 4336e(1), and so the Agency must do an EA or EIS. *See* 42 U.S.C. § 4336(b)(2).

Indeed, normally, the place for an agency to determine that a particular action will not result in a significant impact as a result of modification or mitigation is after the completion of an EA. Such a determination—called a mitigated finding of no significant impact (FONSI)—thus is normally the end result of the EA review process, not a categorical exclusion determination. By bringing that forward into the categorical exclusion stage of environmental review, the Agency is engaging in an attempted end-run around the procedural requirements of the EA process. The statute envisions categorical exclusions and EAs to play separate roles, and the Agency's approach thus cannot be squared with the statute.

B. The statute does not permit reliance on previously prepared environmental documents.

CEQ also had permitted an agency to adopt EISs, environmental assessments, and categorical exclusion determinations where the proposed actions are "substantially the same" as the action covered by the original environmental document. 40 C.F.R. § 1506.3. The Agency repeats that authority here, *see* DOI Handbook § 3.1; 90 Fed. Reg. at 29505 (43 C.F.R. § 46.205(e)).

Whether there is any statutory support for this kind of adoption or reliance is questionable. The statute specifies the circumstances where no environmental review is required, 42 U.S.C. § 4336, and allows an agency to rely on a prior environmental document only in cases "[w]hen an agency prepares a programmatic environmental document," 42 U.S.C. § 4336b. But even if some forms of adoption could be squared with the statute—where the adopted document was subjected to any required public participation and other requirements in the context of applying it to the proposed action—the statute should not be read to bear using such a process to skip procedural steps altogether.

To that end, the Agency's attempt to use this process to expand the scope of available categorical exclusions that have never been formally adopted pursuant to 42 U.S.C. § 4336c is not permitted. NEPA expressly limits reliance on categorical exclusions to only "one of the agency's [own] categorical exclusions" [or] "another agency's categorical exclusions consistent with section 4336c of this title." 42 U.S.C. § 4336(a)(2); *see also id.* § 4336(b)(2). Further, even for situations where an agency has adopted a categorical exclusion, it can be applied only to the specific activities that fall within that "category of actions," *id.* § 4336e(1), not to any other action that the agency claims is "substantially the same."

C. The emergency circumstances provision is not authorized by statute.

The agency has retained a version of CEQ's provision (40 C.F.R. § 1506.11 (2024)) relating to NEPA compliance in the case of emergencies. The IFR appears to retain Interior's pre-existing regulation governing emergency responses without making material changes. *See* 90 Fed. Reg. at 29501 (describing changes to 43 C.F.R. § 46.150 as "minor clarifying adjustments" that "do not change the meaning of the provisions").

As an initial matter, the Agency has not located any statutory support within NEPA that justifies non-compliance. NEPA does not, by its terms, allow its requirements to be skipped in the case of emergency. Indeed, the statute and its promise of compliance "to the fullest extent possible," 42 U.S.C. § 4332, should be interpreted as "words of expansion rather than words of limitation," Richard Lazarus, *The National Environmental Policy Act in the United States Supreme Court: A Reappraisal and a Peek Behind the Curtains*, 100 Geo. L.J. 1508, 1541 (2012) (collecting cases), and early courts applying the act rejected the argument that agencies had discretion not to implement the statute, *see, e.g.*, *Monroe County Conservation Council v. Volpe*, 472 F.2d 693, 699 (2d Cir. 1972) ("NEPA must be followed unless some existing law applicable

to the agency ma[kes] compliance impossible."); *Ely v. Velde*, 451 F.2d 1130, 1138 (4th Cir. 1971). Accordingly, there is no basis for the Agency omitting its obligation to satisfy NEPA by claiming the existence of an emergency.

Relatedly, the Agency has omitted the reminder—found in CEQ's prior version of the regulations—that "[a]lternative arrangements do not waive the requirement to comply with the statute, but establish an alternative means for NEPA compliance." 40 C.F.R. § 1506.11 (2024). That had been an important provision to "address confusion as to whether, during emergencies, agency actions are exempted from NEPA." 89 Fed. Reg. at 35529. The answer to that confusion was a resounding no. *Id*. The Agency should retain this express disclaimer.

We also emphasize concerns that this provision will be abuse any emergency process. Interior's April 23, 2025 announcement of *Alternative Arrangements for NEPA Compliance*, and President Trump's baseless and unsupported declaration of a "national energy emergency," Executive Order 14156, 90 Fed. Reg. 8433 (Jan. 29, 2025), raise substantial concerns that Section 46.150 will be used to circumvent NEPA and shut the public out of energy approval processes. Doing so would compromise the quality and integrity of Interior's decision making and lead to worse outcomes for communities and the environment.

President Trump's so-called "energy emergency" is transparent pretext to exempt fossil fuel development from environmental laws rather than a response to an actual energy emergency. Attempting to approve new fossil fuel projects under Section 46.150 would be arbitrary and capricious and violate NEPA. We incorporate by reference the points made in the attached May 16, 2025 comment letter.

XVIII. Regardless Of Any Changes To NEPA Procedures, Interior Must Ensure Meaningful Government-To-Government Consultation When a Federal Action May Affect The Rights and Resources Of Native Nations.

Federal agencies are required to develop tribal consultation policies and guidance in accordance with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, 65 Fed. Reg. 67249 (Nov. 9, 2000). Government-to-government consultation between the United States and Native Nations is required when a federal agency action would have implications for tribal self-government, tribal trust resources, and Indian tribal treaty and other rights. Federal agencies are required to comply with their own internal guidance and policies, including tribal consultation policies. Accordingly, agencies must provide adequate time, information and additional resources such as technical support for meaningful consultation to occur when a federal action may affect the rights and resources of Native Nations.

XIX. Scientific Integrity And Incomplete Information

Interior Handbook Section 3.7 addresses scientific integrity and incomplete information. NEPA requires agencies to "ensure the professional integrity, including scientific integrity, of the

discussion and analysis in an environmental document." 42 U.S.C 4332(2)(D). In cases where there is incomplete information and complete information cannot be obtained, the agency should/must address the issue using accepted scientific methods as provided in prior CEQ regulations. *See* 40 C.F.R. § 1502.21 ("statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant effects on the human environment; (3) a summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant effects on the human environment, and (4) the agency's evaluation of such effects based upon theoretical approaches or research methods generally accepted in the scientific community."); *see also* 40 C.F.R. § 1502.22(b) (1979). DOI's failure to include any similar provision does not assure the scientific integrity of its analyses.

XX. Unquantified Environmental Amenities And Values

The IFR and Handbook fail to comply with NEPA's mandate to "identify and develop methods and procedures, in consultation with the Council on Environmental Quality . . . , which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations." 42 U.S.C. § 4332(2)(B). The IFR and Handbook fail to identify any methods to ensure equal consideration of environmental amenities. The IFR is silent on this requirement. The Handbook merely requires a "discussion" of environmental amenities in the agency also prepares a formal "cost-benefit analysis." DOI Handbook § 3.5(b). Limiting consideration of environmental amenities to a "discussion" in those narrow instances where an agency prepares a cost benefit analysis is insufficient. It fails to establish any procedure for ensuring environmental amenities are given appropriate consideration in agency decision-making.

XXI. Draft Environmental Impact Statements

As explained above, and reiterated here, the IFR and Handbook fail to comply with NEPA by failing to mandate preparation and disclosure of draft environmental impact statements. NEPA requires agencies to consult with and obtain comments from expert agencies "[p]rior to making any detailed statement." 42 U.S.C. § 4332(2)(C). The Clean Air Act further requires EPA to "review and comment in writing on the environmental impact of any matter relating" to EPA's responsibilities. 42 U.S.C. § 7609(a). Such consultation and comments on environmental impacts cannot occur without the preparation and circulation of draft environmental impact statements. Further, because NEPA mandates agencies to "cooperat[e]" with "concerned public and private organizations"—in addition to federal, state, and local agencies, 42 U.S.C. § 4331(a), the Agency must/should further assure that draft environmental impact statements are also disclosed to the public for comment.

XXII. The IFR Fails To Comply With The National Policies of NEPA.

As emphasized throughout these comments, but reiterated here, the IFR fails to comply with any of the policies of NEPA. The unambiguous purpose of NEPA is environmental protection: "The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality." 42 U.S.C. § 4321.

NEPA further provides:

> **(a)** The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.
>
> **(b)** In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may--
>
> **(1)** fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
>
> **(2)** assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
>
> **(3)** attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
>
> **(4)** preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

42 U.S.C. § 4331.

The procedural provisions of NEPA must be "interpreted and administered" "to the fullest extent possible" to further these sweeping policies of environmental protection. 42 U.S.C. § 4332(1). The IFR fails to comply with the policies of NEPA. The IFR contains only three provisions—addressing analyses prepared by contractors and applicants, emergency provisions, and categorical exclusions—each of which prioritizes economic efficiency over environmental protection. 43 C.F.R. 46.105 to 46.215. None of these provisions furthers any of the goals of NEPA, much less "to the fullest extent possible." As such, the IFR is inconsistent with and violative of NEPA.

XXIII. Conclusion.

For all these reasons, the Agency's IFR and related Handbook are inconsistent with NEPA and bedrock principles of administrative law. We urge the Agency to withdraw the IFR and related manual until the agency can issue draft rules subject to comment, with a reasonable timeline for comments.