

**COMMENTS OF ATTORNEYS GENERAL OF CALIFORNIA, ARIZONA,
COLORADO, CONNECTICUT, DELAWARE, ILLINOIS, MARYLAND,
MINNESOTA, NEW YORK, OREGON, VERMONT, WASHINGTON, THE
COMMONWEALTH OF MASSACHUSETTS, AND THE DISTRICT OF COLUMBIA**

July 27, 2026

VIA REGULATIONS.GOV

U.S. Environmental Protection Agency
EPA Docket Center, Federal Activities Division Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

To Whom It May Concern:

The Attorneys General of the States of California, Arizona, Colorado, Connecticut, Delaware, Illinois, Maryland, Minnesota, New York, Oregon, Vermont, and Washington, the Commonwealth of Massachusetts; and the District of Columbia (collectively, States) respectfully submit these comments in opposition to the Environmental Protection Agency’s (EPA) Proposed Rule (Rule or Proposed Rule) amending its regulations implementing the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4347.¹

NEPA has long supported informed and transparent agency decision-making and allowed for meaningful public participation in developing and reviewing proposed federal actions.² Congress enacted NEPA to advance a national policy of environmental protection by requiring federal agencies to conduct thorough and careful review of their actions’ environmental impacts.³ As the Supreme Court has explained, Congress intended NEPA’s “action-forcing procedures” to help “[e]nsure that the policies [of NEPA] are implemented.”⁴

¹ Update of Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions, 91 Fed. Reg. 38,359 (June 25, 2026), Docket ID No. EPA–HQ–AO–2025–1080.

² U.S. Gov’t Accountability Off., GAO-14-369, National Environmental Policy Act: Little Information Exists On NEPA Analyses, 16 (2014), <https://www.gao.gov/products/gao-14-370> (“[a]ccording to studies and agency officials, some of the qualitative benefits of NEPA include its role as a tool for encouraging transparency and public participation and in discovering and addressing the potential effects of a proposal in the early design stages to avoid problems that could end up taking more time and being more costly in the long run.”) (last visited July 20, 2026); Implementation of Procedural Provisions: Final Regulations, 43 Fed. Reg. 55,978 (Nov. 29, 1978) (hereinafter the 1978 Final Rule).

³ 42 U.S.C. §§ 4331, 4332.

⁴ *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979) (quoting S. Rep. No. 91-296, at 19 (1969)); *see also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (“Simply by focusing the agency’s attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated, only to be discovered after resources have been committed or the die otherwise cast.”).

States have a strong interest in robust NEPA compliance and the opportunities for public participation required by NEPA as a means to protect their residents, property, and natural resources. The States are injured when our residents suffer from the effects of environmental degradation, including effects exacerbated by climate change,⁵ and have a quasi-sovereign interest in preventing harm to the health of our natural resources and ecosystem.⁶ States also have a strong interest in the federal agencies' consultation process with state agencies that have jurisdiction or special expertise related to the federal permitting process.

The Rule would harm these State interests by curtailing environmental review and opportunities for public participation in a manner and to an extent not warranted by law. These comments describe how the Rule: (1) harms the States; (2) is arbitrary and capricious; and (3) is contrary to law. In sum, the Rule is unlawful. For the reasons stated below, the States strongly oppose the Rule and request that it be withdrawn in its entirety.

I. BACKGROUND

Since 1969, NEPA has promoted informed, transparent, and coordinated agency decision making and meaningful public participation in the development of major infrastructure projects. By requiring thorough environmental review ahead of significant federal actions, NEPA has helped regulatory agencies and the American people evaluate and understand how such projects impact the environment and public health.⁷ NEPA's procedural safeguards have, among other things, protected drinking water from radioactive contamination, protected the public from exposure to harmful air pollutants and pathogens, and alerted agencies to wildfire risk so that damage from those fires could be mitigated.⁸ Across the country, Americans have benefited from increased safety, preservation of natural resources, and long-term reductions in costs as a result of NEPA's review process.

⁵ *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Baez*, 458 U.S. 592, 607 (1982); *Maryland v. Louisiana*, 451 U.S. 725, 737–38 (1981).

⁶ *Massachusetts v. EPA*, 549 U.S. 497, 519–22 (2007).

⁷ See generally Comments of Attorneys General of California, Illinois, Maryland, Massachusetts, New Jersey, New York, Oregon, Vermont, and Washington, and the Secretary of the Commonwealth of Pennsylvania Department of Environmental Protections on Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28,591, at 2–5 (Aug. 20, 2018) [hereinafter 2018 Multistate Comments], <https://www.regulations.gov/comment/CEQ-2018-0001-11812>; Comments of Attorneys General of Washington, California, New York, District of Columbia, Connecticut, Delaware, Guam, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, and Vermont on Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 1,684, at 8–12 (Mar. 10, 2020) [hereinafter 2020 Multistate Comments], <https://www.regulations.gov/comment/CEQ-2019-0003-172704>.

⁸ See Env't L. Inst., *NEPA Success Stories: Celebrating 40 Years of Transparency and Open Government* (2010), https://ceq.doe.gov/docs/get-involved/NEPA_Success_Stories.pdf; Elly Pepper, Never Eliminate Public Advice: NEPA Success Stories, NRDC (Feb. 1, 2015), <https://www.nrdc.org/resources/never-eliminate-public-advice-nepa-success-stories> (last visited July 20, 2026).

A. CEQ Adopted Regulations to Address Inconsistent EPA Practices and Interpretations

From 1978 to 2025, CEQ's regulations implementing NEPA guided environmental review for agencies across the federal government. This single set of overarching regulations ensured consistency across federal agencies and actions.⁹

CEQ began providing federal agencies with guidelines for consistent application of NEPA across agencies in 1970, soon after NEPA was enacted.¹⁰ After seven years of attempting to implement NEPA across agencies with only guidelines, CEQ found that "inconsistent agency practices and interpretation of the law . . . impeded Federal coordination and made it more difficult for those outside government to understand and participate in the environmental review process."¹¹ To address those difficulties, in an Executive Order issued in May 1977, President Carter directed CEQ to "[i]ssue regulations to Federal agencies for the implementation of the procedural provisions of [NEPA] (42 U.S.C. § 4332(2))."¹² CEQ's regulations would serve to create a "uniform, government-wide" approach to NEPA review;¹³ to "make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to . . . focus on real environmental issues."¹⁴ CEQ issued final NEPA implementing regulations in 1978.¹⁵

The 1978 regulations were binding on all federal agencies.¹⁶ Agencies conformed their NEPA procedures accordingly: EPA's regulations and those of other agencies referred to and in some cases explicitly incorporated CEQ's regulations.¹⁷ In addition to promoting uniformity across the federal government, CEQ's regulations aided development of state environmental regulations and facilitated public involvement in the environmental review process. And by

⁹ Implementation of Procedural Provisions: Final Regulations, 43 Fed. Reg. 55,978 (Nov. 29, 1978).

¹⁰ CEQ issued interim guidelines for implementing NEPA to agencies in May 1970, Statements on Proposed Federal Actions Affecting the Environment: Interim Guidelines, 35 Fed. Reg. 7,390, 7,391 (May 12, 1970), pursuant to President Nixon's Executive Order directing CEQ to issue such guidelines, Exec. Order 11,514, 35 Fed. Reg. 4,247, 4,248 (Mar. 7, 1970). CEQ finalized the guidelines in 1971 and revised them in 1973. Statements on Proposed Federal Actions Affecting the Environment: Guidelines, 36 Fed. Reg. 7,724 (Apr. 23, 1971); Preparation of Environmental Impact Statements: Proposed Guidelines, 38 Fed. Reg. 10,856 (May 2, 1973).

¹¹ 43 Fed. Reg. at 55,978.

¹² Exec. Order No. 11,991, 42 Fed. Reg. 26,967 (May 24, 1977).

¹³ 43 Fed. Reg. at 55,978.

¹⁴ Exec. Order No. 11,991, 42 Fed. Reg. at 26,967.

¹⁵ 43 Fed. Reg. at 55,978.

¹⁶ *Id.*

¹⁷ *See, e.g.*, 40 C.F.R. § 6.100(b) (" . . . adopts the CEQ Regulations (40 CFR Parts 1500 through 1508) implementing NEPA . . . Subparts A through C supplement, and are to be used in conjunction with, the CEQ Regulations") (EPA); 36 C.F.R. § 220.4(e)(2) ("Scoping shall be carried out in accordance with the requirements of 40 C.F.R. § 1501.7.") (Forest Service); 23 C.F.R. § 771.107 ("The definitions contained in the CEQ regulations . . . are applicable.") (Federal Highway Administration); 43 C.F.R. § 46.20 ("This part supplements, and is to be used in conjunction with, the CEQ regulations . . .") (Interior); 33 C.F.R. § 230.13(b) ("A supplement to the draft or final EIS should be prepared whenever required as discussed in 40 C.F.R. § 1502.09(c).") (Army Corps).

providing a unified set of standards for environmental review across dozens of different agencies, CEQ's regulations helped the public to understand the NEPA process and made participation in the process more accessible.

B. CEQ Rescinded its NEPA Regulations in 2025

CEQ's 1978 regulations were remarkably durable, with only a few minor revisions made over the following four decades.¹⁸ Then, in 2017, after nearly 40 years of stable NEPA implementation, President Trump issued Executive Order (E.O.) 13807 directing CEQ to revise its regulations.¹⁹ In July 2020, CEQ finalized a rule that improperly narrowed environmental review under NEPA, threatened meaningful public participation, and impermissibly restricted judicial review of agency actions ("2020 Rule").²⁰ The States and numerous public interest organizations filed lawsuits challenging the unlawful 2020 Rule.²¹

The lawsuits were dismissed²² after CEQ, under the Biden Administration, issued revised NEPA regulations in 2022 and 2024 (2022 Rule and 2024 Rule, respectively) which reversed many provisions of the 2020 Rule and restored key provisions of the 1978 regulations.²³ Among these, the 2022 Rule required analysis of all reasonably foreseeable effects of a major federal action.²⁴ The 2024 Rule restored most of the remaining provisions of the 1978 regulations, strengthened participation, strengthened analysis of climate change and human health impacts including environmental justice concerns, and implemented amendments to the NEPA statute enacted in the 2023 Fiscal Responsibility Act ("FRA").²⁵

In 2024, a group of states led by Iowa filed a lawsuit—*Iowa v. Council on Environmental Quality*—in federal district court, seeking to vacate the 2024 Rule and reinstate the 2020 Rule.²⁶

¹⁸ U.S. Dep't of Energy, History of CEQ NEPA Regulations and Guidance, <https://www.energy.gov/nepa/history-ceq-nepa-regulations-and-guidance> (last visited Jul. 8, 2026).

¹⁹ Exec. Order No. 13807, 82 Fed. Reg. 40,463 (August 24, 2017).

²⁰ Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020).

²¹ *E.g.*, *California v. Council on Env't Quality*, No. 3:20-cv-06057 (N.D. Cal. August 28, 2020).

²² *State of Iowa v. CEQ*, D.N.D. Case No. 1:24-cv-00089-DMT-CRH, at Dkt. 145, 146.

²³ Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, 86 Fed. Reg. 7,037 (Jan. 25, 2021); *see also* Deadline for Agencies to Propose Updates to National Environmental Policy Act Procedures, 86 Fed. Reg. 34,154 (June 29, 2021).

²⁴ *See* National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23,453 (Apr. 20, 2022) (2022 Rule).

²⁵ *See* National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35,442 (May 1, 2024) (2024 Rule); Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10.

²⁶ Complaint, *Iowa v. Council on Env't Quality*, No. 1:24-cv-00089-DMT-CRH (D.N.D. May 21, 2024), ECF No. 1. However, many of the States also defended the 2024 Rule in the *Iowa* litigation. *See* Proposed Intervenor-Defendant States' Cross Mot. for Partial Sum. J., *Iowa v. CEQ*, No 1:24-cv-00089-DMT-CRH (D.N.D. Aug. 30, 2024), ECF No. 83.

In February 2025, the *Iowa* court vacated the 2024 Rule.²⁷ However, the Eighth Circuit subsequently vacated the *Iowa* court’s decision on July 29, 2025.²⁸

In January 2025, President Trump signed E.O. 14154, the “Unleashing American Energy” order.²⁹ E.O. 14154 revoked President Carter’s original 1977 order directing CEQ to issue regulations and directed CEQ to propose to rescind its NEPA regulations.³⁰ In February 2025, CEQ issued an interim final rule rescinding its NEPA implementing regulations (CEQ Repeal Rule).³¹ In place of the regulations, CEQ issued a guidance memorandum to heads of federal agencies recommending that agencies “revise . . . their NEPA implementing procedures (or establish such procedures if they do not yet have any) to expedite permitting approvals” (CEQ Guidance).³² Like the 2020 Rule, the CEQ Guidance improperly limited environmental review. Among other things, it suggested that the scope of effects that agencies are required to analyze should be narrowed³³ and directed agencies to omit environmental justice analysis from NEPA documents.³⁴

II. THE RULE WOULD ADVERSELY IMPACT THE UNIQUE INTERESTS OF STATES, TERRITORIES, AND LOCAL GOVERNMENTS IN HAVING ROBUST NEPA REGULATIONS

NEPA is an example of cooperative federalism, envisioning a strong role for states, territories, and local governments in environmental reviews. Indeed, when enacting NEPA, Congress declared that it was the policy of the federal government to act “in cooperation with States and local governments” in a manner calculated to foster and promote the general welfare so that man and nature can exist in productive harmony so that each person should enjoy a healthful environment in fulfillment of NEPA’s purposes.³⁵ Indeed, NEPA’s success has led to the enactment of similar statutes in many states. The EPA’s revision of its NEPA regulations threatens the interests of the States in protecting our residents and environmental resources

²⁷ See Order Regarding All Mots. for Summ. J. & Partial Summ. J. 23, *Iowa v. CEQ*, No. 1:24-cv-00089-DMT-CRH (D.N.D. Feb. 3, 2025), ECF No. 145. The *Iowa* court also reviewed plaintiffs’ claims that the Phase 2 Rule was arbitrary and capricious, granting some and rejecting others. *Id.* at 32–36.

²⁸ *Iowa v. Council on Env’t Quality*, Case No. 25-1641, Entry ID 5542514 (July 29, 2025).

²⁹ Exec. Order No. 14,154, 90 Fed. Reg. 8,353 (Jan. 20, 2025).

³⁰ *Id.* at 8,355.

³¹ Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10,610 (Feb. 25, 2025), *as corrected by* Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 11,221 (Mar. 5, 2025).

³² Council on Env’t Quality, Memorandum for Heads of Federal Departments and Agencies (Feb. 19, 2025) [hereinafter CEQ Guidance], *available at* <https://nepa.gov/sites/default/files/documents/CEQ%20Memo-Implementation%20of%20NEPA%2002.19.2025.pdf> (last visited July 20, 2026).

³³ *Id.* at 5.

³⁴ *Id.*

³⁵ 42 U.S.C. § 4331(a), (c).

through public participation and robust, informed decision-making processes for major federal actions.

A. The Proposed Rule Would Harm State Sovereign and Proprietary Interests

NEPA regulations protect state sovereign and proprietary interests in at least two fundamental ways: (1) by enabling States to participate meaningfully to assess the impacts of agency actions on state natural resources and public health; and (2) by lessening the strain on state resources of shouldering the regulatory burden of those reviews. The Proposed Rule would adversely impact both interests.

1. The Rule Would Impair the Ability of States to Meaningfully Participate in the NEPA Process

NEPA contains provisions directly incorporating states, territories, and local governments into federal decision making.³⁶ The Congressional declaration of policy underlying NEPA also recognizes the continuing policy of the federal government, “in cooperation with State and local governments,” to use all practicable means and measures in a manner calculated to preserve and enhance the environment.³⁷ Since NEPA’s enactment, States have relied on the opportunity to participate in the NEPA process to protect their proprietary and sovereign interests in their natural resources by, *inter alia*, identifying harms from federal actions to their resources, including to air, water, public lands, cultural resources, wildlife, and the public health and welfare of their residents that agencies might otherwise ignore.³⁸ Participation also allows the States to thoroughly weigh in on the environmental impacts of an action, such as the long-term effects of climate change, the reduction of scarce water resources, and discrete impacts on environmentally-burdened communities. And for certain federal projects where state environmental review may be limited or even preempted, a robust NEPA process is critical to protecting state interests, resources, and residents from harmful environmental effects that might otherwise evade review. State agencies for this reason regularly engage in the federal NEPA process as cooperating and commenting agencies, or as agencies with special expertise, in order to ensure the federal NEPA process considers potential effects to each State’s natural resources and public health.

³⁶ Specifically, Section 102(2)(C) is premised on the solicitation of “the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards,” in requiring that these comments and views be made available to the public and “accompany the proposal through the existing agency review process” for an environmental impact statement. 42 U.S.C. § 4332(2)(C).

³⁷ 42 U.S.C. § 4331(a), (c)

³⁸ The States have discussed the importance of NEPA and its role in protecting the States’ proprietary and sovereign interests in their natural resources in multiple comments on CEQ’s NEPA rulemakings since 2018. *See* Comments of Attorneys General of the States of Washington, *et al* on the Proposed Phase 2 Rule, 88 Fed. Reg. 49924 (July 31, 2023), <https://www.regulations.gov/comment/CEQ-2023-0003-35189> (last visited July 23, 2026); Comments of Attorneys General of Washington, *et al.*, on Notice of Proposed Rulemaking 86 Fed. Reg. 55757 (Nov. 22, 2021) <https://www.regulations.gov/comment/CEQ-2021-0002-33769> (last visited July 23, 2026); 2020 Multistate Comments; 2018 Multistate Comments.

The Proposed Rule would impair public participation in the NEPA process and thereby reduce or eliminate the expected benefits it provides. EPA's NEPA regulations serve a critical function in ensuring that EPA acts in cooperation with State and local governments when analyzing the potential environmental impacts of its actions. For example, EPA's regulations have for years required the agency to solicit comments from federal, state, and local agencies, Indian tribes, and the affected public on both the notice of intent to prepare an environmental impact statement (EIS) and the draft EIS.³⁹ EPA's current regulations also apply this public notice and comment requirement to draft environmental assessments (EAs), draft findings of no significant impact (FONSI), supplemental EISs, and re-evaluations of NEPA documents that are five years or older where the subject action had not yet been implemented.⁴⁰ EPA's regulations additionally require the agency to review and respond to substantive comments on the draft EIS in the final EIS.⁴¹

Public comment on draft NEPA documents, and the requirement that EPA respond to those comments, provides the means whereby EPA can ensure that public input about environmental impacts of proposed actions, including on vulnerable populations and communities, are considered and addressed in final environmental documents. Public comment on draft NEPA documents is necessary to effectuate NEPA's "twin aims" of requiring that federal agencies "consider every significant aspect of the environmental impact of a proposed action" and ensuring the agency "inform[s] the public that it has indeed considered environmental concerns in its decision making process."⁴²

In contrast, the Rule would require solicitation of public comment only on the notice of intent to prepare an EIS and would not require that EPA respond to public comments, thereby increasing the chance that significant environmental impacts would be overlooked or disregarded.⁴³ Providing for public comment only at the early stage of publishing a notice of intent (NOI) is not sufficient to meet EPA's responsibilities under NEPA because the information available to the public at that early stage is minimal, providing no analysis of potential impacts to environment. Furthermore, EPA's current regulations require publication of supplemental EISs; the Rule does not appear to require publication of supplemental EIS, allowing EPA to make changes to its environmental review in response to significant changes in circumstance without any public notification.⁴⁴ Additionally, the Rule omits the requirement, in

³⁹ 40 C.F.R. § 6.100 (b) (incorporating CEQ regulations, including requirement to consider and respond to public comments on draft EIS in 40 C.F.R. § 1503.4, as amended in 2024 by 89 Fed. Reg. 35442, 35558 (May 1, 2024)).

⁴⁰ 40 C.F.R. § 6.203(b)(1); *see* 40 C.F.R. § 6.203(a)(1) ("The procedures in this section apply to EPA's environmental review processes, including development, supplementation, adoption, and revision of NEPA documents"), § 6.200(h) (requiring EPA to consider "public views" on re-evaluation of NEPA documents that are five years or older).

⁴¹ 40 C.F.R. § 6.203(c)(3)(vi).

⁴² *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1066 (9th Cir. 2002) (citing *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983)).

⁴³ 91 Fed. Reg. at 38, 373.

⁴⁴ 91 Fed. Reg. at 38,379.

CEQ's former regulations which EPA previously adopted, that the agency allow for public review and comment before adopting another agency's EA or EIS, or before adopting a new categorical exclusion.⁴⁵ Each of these proposed changes would impair public participation in the NEPA process and thereby reduce or eliminate the benefits it provides to EPA, the States, and the public.

2. The Rule Would Place an Increased Burden on States to Evaluate the Impacts of Federal Actions

Many States have their own state environmental statutes and regulations modeled on NEPA. These include the California Environmental Quality Act,⁴⁶ Washington's State Environmental Policy Act,⁴⁷ New York's State Environmental Quality Review Act,⁴⁸ Connecticut's Environmental Policy Act,⁴⁹ New Jersey's Executive Order 215,⁵⁰ the Massachusetts Environmental Policy Act,⁵¹ and the District of Columbia's Environmental Policy Act.⁵² Where an action subject to state environmental review also requires NEPA review, state and local agencies can often comply with their own environmental review requirements by adopting or incorporating by reference certain environmental documents prepared under NEPA, but only if those NEPA documents exist and meet state statutory requirements.⁵³

The Rule would increase the burden on the States by shifting the responsibility to analyze the potential impacts of federal actions from EPA to the States. The States' laws are often administered in conjunction with NEPA, either through coordinated state and federal review or by relying on NEPA review to satisfy state environmental review requirements. This collaboration allows state, local, and federal agencies to share documents, reduce paperwork, and efficiently allocate limited time and resources. Changes to EPA's NEPA regulations in the Rule would make this coordination more difficult and time consuming. For instance, the Rule's definition of environmental impacts or effects could result in situations where EPA's analysis of indirect and cumulative impacts would be inadequate to satisfy a state's standards. Similarly, the Rule's omission of the previous requirement for EPA to consider an environmentally preferred

⁴⁵ See former 40 C.F.R. § 1506.3(a)(1) (requiring that if the adopting agency's proposed action is not substantially the same as the actions covered by an original EIS, the adopting agency "shall treat the statement as a draft, supplement or reevaluate it as necessary, and republish and file it"); § 1506.3(c) (requirements for adopting another agency's EA); § 1507.3(c)(8) (requiring agencies to "[s]ubstantiate the proposed new or revised categorical exclusion...in a written record that is made publicly available as part of the notice and comment process.").

⁴⁶ Cal. Pub. Res. Code § 21000–21189.57.

⁴⁷ Wash. Rev. Code. ch. 43.21C.

⁴⁸ N.Y. Envtl. Conserv. Law art. 8; N.Y. Comp. Codes R. & Regs. tit. 6, pt. 617.

⁴⁹ Conn. Gen. Stat. § 22a-1 *et seq.*

⁵⁰ Exec. Order No. 215 (September 11, 1989).

⁵¹ Mass. Gen. Laws, ch. 30, §§ 61-62I.

⁵² D.C. Code § 8-109.01–109.12; D.C. Mun. Regs. tit. 20, § 7200–7299.

⁵³ See, e.g., N.Y. Comp. Codes R. & Regs. tit. 6, § 617.15; Mass. Gen. Laws, ch. 30, § 62G.

alternative and “no action” alternative would also be inconsistent with some state standards.⁵⁴ In such cases, state agencies would be unable to rely on the federal NEPA document to make their own environmental findings. Thus, the burden would fall on the States to conduct additional analysis, such as preparing a separate state analysis of indirect and cumulative impacts and alternatives. Rather than expediting actions that require NEPA review, this burden shifting would create inefficiencies that would likely delay them.

The Rule’s incorporation of the court-created functional equivalence doctrine would also increase the burdens on the States. The Rule states that in applying the functional equivalence doctrine, “courts have found EPA to be exempt from the procedural requirements of NEPA for certain actions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), the Safe Drinking Water Act (SDWA), and the Marine Protection, Research, and Sanctuaries Act (MPRSA).”⁵⁵ EPA proposes to “identify the statutory exemptions and authorities that have been found to be functionally equivalent to NEPA” and that by doing so it would “provide for consistency and predictability for actions under these authorities.”⁵⁶

Were EPA to apply this doctrine with respect to statutes identified in the Rule, such application would create a structural tension with the States’ independent environmental review obligations under their environmental statutes. EPA’s invocation of functional equivalence would not relieve the States of their own parallel review duties; it would instead increase the time and effort required to fulfill those duties.

Moreover, even if additional environmental review was not required under a State’s statutes, the Rule would diminish the amount of information available to state and local agencies and the public regarding environmental impacts of proposed projects. In such a case, neither the federal nor the State agency responsible for a project would be required to analyze or disclose the same level of information that would be required under EPA’s current regulations. This would deprive the States and the public of the ability to participate in the NEPA process and ensure that EPA’s environmental decision-making is well-informed.

In sum, the States would need to expend additional time and resources on environmental review of proposed federal actions were the Rule to be promulgated as currently written. EPA’s finding that the Rule would have no federalism implications under Executive Order 13132 is accordingly wrong and unsupported. EPA should reconsider the federalism implications of the Rule, provide an accurate assessment of those implications, and provide a rational conclusion regarding the federalism implications based on that assessment.

⁵⁴ For example, under the California Environmental Quality Act, agencies must evaluate a specific “no project” alternative. 14 Cal. Code Regs. § 15126.6(e)(1).

⁵⁵ 91 Fed. Reg. at 38,362.

⁵⁶ *Id.*

B. The Rule Would Undermine the Full Evaluation of Major Federal Actions at a Time When Climate Change Threats Make Comprehensive Analysis Even More Critical to the States

A robust NEPA process resulting in full evaluation of reasonably foreseeable environmental impacts of major federal actions has become even more critical in the face of the increasing severity and frequency of compounding climate change impacts on States' sovereign lands and coastal areas, natural resources, infrastructure, and the health and safety of residents.

Climate change is causing significant environmental and economic losses for States and our residents, including, but not limited to, damage to infrastructure and natural resources,⁵⁷ housing⁵⁸ and job instability,⁵⁹ and the cost of health care and lives lost from environmental pollutants,⁶⁰ extreme storms,⁶¹ heatwaves,⁶² and wildfires.⁶³ For instance, New Mexico already faces serious environmental challenges, with the entire state currently suffering from drought conditions and average temperatures increasing fifty percent faster than the global average over the past century. The escalating heatwaves, flooding, sea-level rise, extreme storms, and infectious diseases brought on by climate change have greater impacts on “[r]acially and socioeconomically marginalized communities,” including communities of color, low-income communities, and Indigenous Peoples and Tribal Nations, as well as people with disabilities and

⁵⁷ JEC Democratic Majority, *Climate-Exacerbated Wildfires Cost the U.S. Between \$394 to \$893 Billion Each Year in Economic Costs and Damages* 1 (Oct. 2023), https://www.jec.senate.gov/public/_cache/files/9220abde-7b60-4d05-ba0a-8cc20df44c7d/jec-report-on-total-costs-of-wildfires.pdf (last visited July 24, 2026); NOAA National Centers for Environmental Information (NCEI), *Billion-Dollar Weather and Climate Disasters* (2025), <https://www.ncei.noaa.gov/access/billions/> (last visited July 24, 2026).

⁵⁸ Mariya Bezgrebelna et al., *Climate Change, Weather, Housing Precarity, and Homelessness: A Systematic Review of Reviews*, 18 Int J Environ Res Public Health 5812 (May 28, 2021); Taylor Gauthier & Financial Security Program, *The Devastating Effects of Climate Change on US Housing Security*, The Aspen Institute (April 21, 2021), <https://www.aspeninstitute.org/blog-posts/the-devastating-effects-of-climate-change-on-us-housing-security/> (last visited July 24, 2026).

⁵⁹ A. R. Crimmins et al., Fifth National Climate Assessment, at Ch. 19 (2023), https://repository.library.noaa.gov/view/noaa/61592/noaa_61592_DS1.pdf (last visited July 24, 2026) (Climate change is anticipated to “impact employment by changing demand for workers, reducing worker safety, altering the location of available jobs, and changing workplace conditions in heat-exposed jobs.”) (citations omitted).

⁶⁰ American Lung Association, *Asthma Trends and Burden* (last updated July 15, 2024), <https://www.lung.org/research/trends-in-lung-disease/asthma-trends-brief/trends-and-burden> (last visited July 24, 2026).

⁶¹ *Supra* n. 60 at: Ch. 2.

⁶² R. Emerton et al, *Global heat stress intensification and its expanding footprint on the human population*, *Nature Climate Change* (2026), <https://www.nature.com/articles/s41558-026-02670-5> (last visited July 24, 2026).

⁶³ Kim Knowlton et al., *Six Climate Change-Related Events in the United States Accounted for About \$14 Billion in Lost Lives and Health Costs*, 30 Health Affairs 2167, 2170 (Nov. 2011); Vijay S. Limaye et al., *Estimating the Health-Related Costs of 10 Climate-Sensitive U.S. Events During 2012*, 3 GeoHealth 245, 245 (Sep. 2019), <https://doi.org/10.1029/2019GH000202>; Steven Woolf et al., *The Health Care Costs of Extreme Heat*, Center for American Progress (Jun. 27, 2023), <https://www.americanprogress.org/article/the-health-care-costs-of-extreme-heat/> (last visited July 24, 2026).

unhoused people.⁶⁴ Such climate-related impacts disproportionately affect vulnerable populations facing existing environmental burdens,⁶⁵ exacerbating both environmental risk⁶⁶ and economic inequality.⁶⁷

The States are already committing significant resources to meet policy goals and comply with statutory mandates to reduce in-state greenhouse gas emissions while also investing in infrastructure to protect communities and state resources from the effects of climate change. A fully informed decision-making process requires that federal agencies work closely with state, tribal, territorial and local governments, as well as the public, to ensure that decisions account for the climate change impacts on communities already overburdened with pollution and associated public health harms.

C. The Rule Would Make it More Difficult for States to Protect their Overburdened Communities and Vulnerable Populations

The States have significant interests in robust and consistent evaluation of the full range of effects of EPA's actions to prevent the creation and exacerbation of public health and other disparities flowing from uninformed federal decisions that adversely impact vulnerable communities. The Rule threatens these important interests.

The Rule threatens these interests by impairing the ability of the States to understand the full range of effects from EPA's actions and by eliminating procedural mechanisms that help ensure that EPA does not overlook comments related to impacts on populations and communities that have historically borne disproportionate environmental harms. In addition, the Rule threatens to eliminate consideration of significant cumulative effects of a federal project on communities that already face a historic and disproportionate pattern of exposure to environmental hazards. These communities are more likely to suffer future health disparities if cumulative impact review is eliminated from the NEPA process.

Studying cumulative and indirect impacts is essential to preventing further harm to vulnerable communities, including communities of color, low-income communities, and Indigenous Peoples and Tribal Nations, already burdened with the effects of disproportionately high levels of pollution and other environmental harms. Consideration of cumulative effects is also vital in understanding the health vulnerabilities of such geographically defined communities as well as populations such as people with disabilities, LGBTQ+ people, unhoused people, older adults, and young people, and assisting decision-makers to mitigate and prevent disproportionate

⁶⁴ Alique Berberian et al., Racial Disparities in Climate Change-Related Health Effects in the United States, 9 Current Environmental Health Rep. 451, 454 (May 28, 2022) <https://doi.org/10.1007/s40572-022-00360-w> (last visited July 24, 2026); *see also supra* n. 60 at ch. 15.

⁶⁵ *Id.* at 451-52.

⁶⁶ H. Orru et al., *The Interplay of Climate Change and Air Pollution on Health*, 4 Current Env'tl. Health Report 504, 504 (2017) <https://link.springer.com/article/10.1007/s40572-017-0168-6> (last visited July 24, 2026).

⁶⁷ Avery Ellfeldt & E&E News, *Climate Disasters Threaten to Widen U.S. Wealth Gap*, Scientific American (Oct. 2, 2023), <https://www.scientificamerican.com/article/climate-disasters-threaten-to-widen-u-s-wealth-gap/> (last visited July 24, 2026).

environmental and climate harms.⁶⁸ Agencies simply cannot know the full impact of a project on a community without considering its existing levels of pollution and the cumulative impacts of adding another pollution source or environmental burden. Similarly, without considering existing burdens, agencies cannot identify meaningful alternatives or mitigation measures to reduce or avoid harms to impacted communities. And increased public health and community harms from weakened NEPA reviews would require greater expenditures of state, Tribal, territorial and local funds to evaluate and remedy increased public health disparities flowing from uninformed federal agency action. As a result, cumulative impacts analysis is a fundamental component of achievement of compliance with NEPA and civil rights laws by federal agencies and funding recipients, as EPA has recognized.⁶⁹

The Rule’s removal of any consideration of impacts to specific populations⁷⁰ would exacerbate the risk that cumulative impacts to these populations go unaddressed. Further, by eliminating the requirement that EPA respond to comments on an EIS, the Rule would eliminate a procedural safeguard for ensuring that EPA considers all public input about the potential environmental impacts of a proposed project.

In summary, EPA’s longstanding regulations implementing NEPA are an important tool for the States to protect their interests in informed federal decision-making and avoiding numerous types of potential harms to their resources and the public health of their residents. The States have strong interests in the continued implementation of NEPA regulations that provide for a robust, deliberative, and complete federal environmental review process that the States have relied on for decades. EPA’s Rule threatens to undermine the quality and efficiency of NEPA reviews and impair the States’ interests.

III. THE RULE VIOLATES THE ADMINISTRATIVE PROCEDURE ACT

Under the APA, a “reviewing court shall . . . hold unlawful and set aside” federal agency action found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁷¹ An agency action is “arbitrary and capricious” under the APA where “the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in

⁶⁸ See 2020 Multistate Comments; Comments of the Attorneys General of Massachusetts et al. on the U.S. Environmental Protection Agency Interim Framework for Advancing Consideration of Cumulative Impacts, 89 Fed. Reg. 92,125 (November 21, 2024) <https://www.regulations.gov/comment/EPA-HQ-OLEM-2024-0360-0051> (last visited July 27, 2026).

⁶⁹ EPA, EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum (Jan. 2023) at 45 <https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf> (last visited July 24, 2026) (discussing how prohibitions against discriminatory effects under federal civil rights laws and EPA’s non-discrimination regulations encompass the overall effect of a recipient’s activities, including consideration of cumulative impacts).

⁷⁰ 91 Fed. Reg. at 38,364 (“The proposed rule amends § 6.203(a)(5), proposed 6.203(c)(3)(v), and 6.204(b)(1). In all three sections, the EPA removes references to specific populations . . .”).

⁷¹ 5 U.S.C. § 706(2)(A), (D).

view or the product of agency expertise.”⁷² Put another way, an agency must make a “rational connection between the facts found and the choice made.”⁷³ “Agencies are free to change their existing policies,” but they must “provide a reasoned explanation for the change.”⁷⁴ “Reasoned decision making...necessarily requires the agency to acknowledge and provide an adequate explanation for its departure from established precedent.”⁷⁵

The Rule violates the APA in several ways by failing to provide a reasoned explanation for omitting fundamental NEPA requirements that were included in the CEQ regulations and relied upon for decades, failing to assert a rational connection between the facts found and the choice it has made, making decisions that runs counter to the evidence before the agency, and failing to consider important aspects of the problem.

A. The Repeal of CEQ’s Implementing Regulations Is No Justification for Removing Their Requirements from EPA’s NEPA Regulations

First, EPA explains that one justification for its Rule is the CEQ’s repeal of its NEPA implementing regulations.⁷⁶ But this rationale fails to withstand scrutiny because CEQ’s repeal was unlawful for multiple reasons, as explained by the States in their comments on CEQ’s action.⁷⁷

The Rule is also arbitrary and capricious because EPA fails to consider the obvious alternative⁷⁸ of adopting CEQ’s NEPA implementing regulations that EPA currently incorporates by reference. While EPA is correct in stating that the CEQ’s regulations no longer exist, EPA can and should incorporate language previously codified at 40 CFR parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508 into EPA’s regulations at 40 C.F.R. part 6. This would be consistent with past agency practice in that EPA’s regulations currently incorporates CEQ’s regulations by reference.

⁷² *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (*State Farm*).

⁷³ *Burlington Truck Lines, Inc. v. United States*, 371 U. S. 156, 168 (1962).

⁷⁴ *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (citing *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981–82 (2005); see also *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020).

⁷⁵ *Dillmon v. NTSB*, 588 F.3d 1085, 1089-90 (D.C. Cir. 2009) (citing *FCC v. Fox Television Stations, Inc.*, 566 U.S. 502, 515 (2009)).

⁷⁶ 91 Fed. Reg. at 38,361 (“This proposed rule would also fill in gaps in the EPA’s NEPA regulations caused by the withdrawal of CEQ’s NEPA regulations.”).

⁷⁷ See Comments of Attorneys General of the States of Washington, *et al* on Interim Final Rule – Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610 (March 27, 2025) <https://www.regulations.gov/comment/CEQ-2025-0002-88344> (last visited July 24, 2026). The comment letter is attached to this letter as Exhibit A and incorporated by reference.

⁷⁸ *Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 746 & n.36 (D.C. Cir. 1986) (the “failure of an agency to consider obvious alternatives has led uniformly to reversal”) (collecting cases); see, e.g., *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 48 (failure to “even consider the possibility” of “alternative way of achieving the objectives of the Act” was arbitrary and capricious).

EPA must consider the benefits of doing so, and costs that would result from the absence of long-standing requirements and concepts that EPA relied on for decades as a result of incorporating the CEQ regulations into its own NEPA regulations and implementing procedures. NEPA has been a remarkably stable area of law. For example, EPA points to the Supreme Court’s 2025 decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168 (2025) [hereinafter *Seven County*], as a basis for its amendments.⁷⁹ But that decision relied on decades of settled NEPA case law. *Seven County*’s discussion of the deference afforded to agencies in determining whether an EIS complies with NEPA cited to NEPA cases decided in 1978 and 1980,⁸⁰ and its discussion of the scope of impacts an agency must consider cited a case decided in 2004.⁸¹ Other foundational NEPA cases are primarily from the 1970s and 1980s,⁸² and there have been relatively few Supreme Court cases interpreting NEPA over the past 45 years.

CEQ’s regulations issued in 1978⁸³ were durable and effective, with only a few minor revisions made over the following four decades prior to 2020. The changes made in the 2020 rule were not the result of caselaw developments, but designed to improperly narrow environmental review under NEPA, threaten meaningful public participation, and impermissibly restrict judicial review of agency actions.⁸⁴ The amendments to the CEQ regulations during the Biden Administration were similarly not made in response to caselaw developments. Instead, the

⁷⁹ 91 Fed. Reg. at 38,362.

⁸⁰ 650 U.S. at 185 (citing *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978), and *Strycker’s Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227–228 (1980)).

⁸¹ *Id.* at 182 (citing *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752 (2004)).

⁸² See *Andrus v. Sierra Club*, 442 U.S. 347, 357–358 (1979) (upholding CEQ’s construction of NEPA through its regulations and stating “CEQ’s interpretation of NEPA is entitled to substantial deference”); *Robertson v. Methow Valley*, 490 U.S. 332, 351 (1989) (recognizing that the “requirement” to include a discussion of mitigation measures flows in part from CEQ’s implementing regulations, and finding a revision to CEQ’s regulations was “entitled to substantial deference”); see also *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989); *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87 (1983); *Kleppe v. Sierra Club*, 427 U.S. 390 (1976); *Department of Transportation v. Public Citizen*, 541 U.S. 752, 757 (2004). Nearly every Federal Circuit Court of Appeals followed the Supreme Court and endorsed NEPA regulations. See, e.g., *Found. on Econ. Trends v. Lyng*, 817 F.2d 882, 884 n.6 (D.C. Cir. 1987); *Massachusetts v. Watt*, 716 F.2d 946, 948 (1st Cir. 1983), *abrogated on other grounds by Marsh v. Or. Nat. Res. Council*, 490 U.S. 360 (1989); *Brodsky v. U.S. Nuclear Regul. Comm’n*, 704 F.3d 113, 120 n.3 (2d Cir. 2013); *N.J., Dep’t of Env’t Prot. & Energy v. Long Island Power Auth.*, 30 F.3d 403, 409 n.9 (3d Cir. 1994); *Sugarloaf Citizens Ass’n v. FERC*, 959 F.2d 508, 512 n.3 (4th Cir. 1992); *Sierra Club v. Sigler*, 695 F.2d 957, 964 (5th Cir. 1983); *Kentucky Riverkeeper Inc. v. Rowlette*, 714 F.3d 402, 407 (6th Cir. 2013); *Rhodes v. Johnson*, 153 F.3d 785, 787 (7th Cir. 1998); *Goos v. Interstate Com. Comm’n*, 911 F.2d 1283 n.2 (8th Cir. 1990); *In re Operation of Mo. River Sys. Litig.*, 516 F.3d 688, 693 (8th Cir. 2008); *Friends of Boundary Waters Wilderness v. Dombeck*, 164 F.3d 1115, 1125–1127 (8th Cir. 1999). *Trustees for Ala. v. Hodel*, 806 F.2d 1378, 1382 (9th Cir. 1986); *Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988), *overruled on other grounds by Vill. of Los Ranchos de Albuquerque v. Marsh*, 956 F.2d 970 (10th Cir. 1992); *Def. of Wildlife, Earth Island Inst. v. Hogarth*, 330 F.3d 1358, 1369 (Fed. Cir. 2003).

⁸³ National Environmental Policy Act-Regulations: Implementation of Procedural Provisions, 43 Fed. Reg. 55978 (Nov. 29, 1978).

⁸⁴ See Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43304 (July 16, 2020).

rulemakings largely addressed the revisions in the 2020 Rule that did not support the statutory purposes of NEPA.⁸⁵ The second of these rulemakings restored key provisions of the 1978 regulations, requiring analysis of all reasonably foreseeable effects of a major federal action.⁸⁶ The third rulemaking restored most of the remaining provisions of the 1978 regulations, strengthened analysis of climate change and human health impacts, including environmental justice concerns, strengthened public participation, and implemented amendments to the NEPA statute enacted in the 2023 Fiscal Responsibility Act, Pub. L. No. 118-5, 137 Stat.10.⁸⁷

The end result was that, prior to their rescission, CEQ’s NEPA regulations embodied decades of settled law and NEPA procedure, reflecting the expert agency’s best interpretation of the NEPA statute and decades of judicial precedent. The CEQ regulations were also updated to incorporate amendments from the FRA, which is one of the rationales posited by EPA for proposing the current Rule.⁸⁸ EPA should accordingly incorporate the CEQ regulations previously relied upon by EPA in its regulations, as updated to implement the FRA, rather than jettisoning them.

B. *Seven County* Does Not Justify the Rule’s Limits on the Consideration of Indirect and Cumulative Impacts

EPA relies on *Seven County* to justify the Rule’s limits on consideration of indirect and cumulative impacts.⁸⁹ *Seven County* held the following: (1) NEPA directs agencies to focus environmental review on “the project at hand”; (2) agencies need not consider impacts from other projects that may result from a proposed action if the agency has no authority over the project; (3) agencies need not consider impacts that may result from a proposed action—even if they are reasonably foreseeable—if there is “no reasonably close causal relationship”; and (4) whether a proposed action will result in a particular impact that is significant is a fact-dependent question, and courts should defer to the scope of impacts an agency considers as long it draws a “manageable line.”⁹⁰

While *Seven County* circumscribes the “reasonably foreseeable” impacts an agency must consider in conducting NEPA environmental review, it is important to note what the opinion does not say. Specifically, it does not say that an agency need not consider indirect or cumulative

⁸⁵ See Deadline for Agencies to Propose Updates to National Environmental Policy Act Procedures, 86 Fed. Reg. 34154 (June 29, 2021); National Environmental Policy Act Implementing Regulations Revisions, 86 Fed. Reg. 55757 (October 7, 2021) (Proposed Phase 1 Rule).

⁸⁶ National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23453 (Apr. 20, 2022) (Final Phase 1 Rule).

⁸⁷ See National Environmental Policy Act Implementing Regulations Revisions Phase 2, 88 Fed. Reg. 49924 (July 31, 2023) (proposed Phase 2 Rule); National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35442 (May 1, 2024) (final Phase 2 Rule).

⁸⁸ 91 Fed. Reg. at 38,362 (“The EPA is also proposing this rule to update and revise EPA’s NEPA procedures to incorporate the FRA and OBBBA NEPA amendments.”).

⁸⁹ *Id.* (citing 605 U.S. 168 (2025)).

⁹⁰ 605 U.S. at 187-89.

impacts in all cases. Rather, the opinion acknowledges that an agency may have to consider indirect or cumulative impacts from a proposed action, as long as there exists a reasonable causal nexus:

To be clear, 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—for example, run-off into a river that flows many miles from the project and affects fish populations elsewhere, or emissions that travel downwind and predictably pollute other areas. Those so-called indirect effects can sometimes fall within NEPA⁹¹

The Court further recognized that “other projects may be interrelated and close in time and place to the project at hand—a residential development next door to and built at the same time as a ski resort, for example” and thus require analysis in a NEPA document for a project.⁹² *Seven County* accordingly does not excuse agencies from NEPA’s command to consider “reasonably foreseeable” impacts, including indirect and cumulative impacts.

The Rule’s revisions relating to impacts do insert the phrase “reasonably foreseeable” in discussing the impacts EPA must consider in conducting NEPA review, as they must to be consistent with 2023 amendments to the NEPA statute.⁹³ Furthermore, the Rule would require consideration of connected actions, defined as closely related actions automatically triggered by approval of a proposed action, cannot proceed without approval of the proposed action, or are part of an interdependent federal action along with the proposed action.⁹⁴ The States support the Rule’s inclusion of this required language.

Elsewhere, however, the proposed Rule only incorporates what *Seven County* suggests what agencies need not do while ignoring the NEPA statute’s affirmative mandate which survives *Seven County*. The Rule would provide that effects include those with a reasonably close causal relationship with the proposed action and generally do not include effects “if they are remote in time, geographically, or a product of a lengthy causal chain.”⁹⁵ While it may be true in light of *Seven County* that EPA need not consider such attenuated effects in all cases, this language misleadingly suggests a presumption that EPA should not consider such effects. On the contrary, as *Seven County* made clear, there are circumstances where NEPA may require that an agency consider such effects. The Rule would also direct that EISs should consider “effects to the proposed agency action at hand,” and that EPA should “document where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might

⁹¹ *Id.* at 187 (emphasis in original).

⁹² *Id.* at 190.

⁹³ 91 Fed. Reg. at 38,369 (proposed 40 C.F.R. § 6.120(b)(6) (defining effects or impacts to include those that are “reasonably foreseeable”); 42 U.S.C. § 4332(C)(i)-(ii) (amended by Fiscal Responsibility Act of 2023, Pub. L. 118-5, § 321(a), 137 Stat. 38).

⁹⁴ 91 Fed. Reg. at 38,369 (proposed 40 C.F.R. § 6.120(b)(5)).

⁹⁵ *Id.* (proposed 40 C.F.R. § 6.120(b)(6)).

materialize later in time.”⁹⁶ The Rule uses similar language to describe the scope of impacts considered in preparing an EA.⁹⁷

Thus, the proposed Rule misleadingly disclaims EPA’s obligation to consider indirect and cumulative impacts that are reasonably foreseeable results of a proposed action, which is contrary to *Seven County*’s acknowledgement that agencies should consider such impacts. The proposed Rule appears to recognize certain circumstances where reasonably foreseeable indirect and cumulative impacts normally require preparation of an EIS, specifically where a proposed action “is likely to directly, or through induced development, have significant adverse effects upon local ambient air quality or ambient noise levels,” or “is likely to significantly affect the pattern and type of land use (industrial, commercial, recreational, residential) or growth and distribution of population including altering the character of existing residential areas.”⁹⁸ But EPA offers no rationale for limiting the consideration of indirect or cumulative impacts to such circumstances.

The Rule is accordingly contrary to law, specifically NEPA, which expressly requires agencies, in conducting environmental review of a proposed action, to consider all “reasonably foreseeable” environmental impacts that would result from a proposed action.⁹⁹ The plain language, purpose, and legislative history of the NEPA statute make clear that reasonably foreseeable impacts an agency must consider include the broader environmental context.¹⁰⁰ Consequently, courts have long recognized—and continue to recognize—that the reasonably foreseeable impacts an agency must consider include indirect and cumulative impacts.¹⁰¹ The final Rule should therefore be amended to include language affirmatively recognizing EPA’s duty under the NEPA statute to consider indirect and cumulative impacts consistent with *Seven County*.

EPA also improperly invokes the Court’s policy argument that NEPA review causes undue delays. EPA notes that the Court mentioned “‘litigation-averse agencies’ which, in light of judicial ‘micromanage[ment],’ had been ‘tak[ing] ever more time and . . . prepar[ing] ever longer

⁹⁶ *Id.* at 38378 (proposed 40 C.F.R. § 6.207(f)(5)).

⁹⁷ *Id.* at 38376 (proposed 40 C.F.R. § 6.205(b)).

⁹⁸ *Id.* at 38377 (proposed 40 C.F.R. §§ 6.207(a)(3)(iii), (xi)).

⁹⁹ 42 U.S.C. § 4332(C)(i)-(ii).

¹⁰⁰ *See id.* § 4331(a) (announcing policy to preserve the environment for “present and future generations”); *id.* § 4332(I) (directing agencies to “recognize the worldwide and long-range character of environmental problems”); S. Rep. No. 91-296, at 5 (1969) (“Important decisions concerning the use and the shape of man’s future environment continue to be made in small but steady increments which perpetuate rather than avoid the recognized mistakes of previous decades.”).

¹⁰¹ *See, e.g., Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) (interpreting NEPA to require consideration of “cumulative or synergistic environmental impact.”); *NRDC v. Hodel*, 865 F.2d 288, 297–98 (D.C. Cir. 1988) (stating “NEPA, as interpreted by the courts, and CEQ regulations both require agencies to consider the cumulative impacts of proposed actions”); *Ctr. for Biological Diversity v. United States Bureau of Land Mgmt.*, 141 F.4th 976, 993, 999–1000 (9th Cir. 2025) (“NEPA . . . requires that a federal agency consider every significant aspect of the environmental impact of a proposed action. . . . NEPA requires agencies to evaluate the direct and indirect effects of the proposed action.”) (internal quotations and citations omitted).

EISs for future projects.” And it justifies the Rule, in part, to “streamline its NEPA process” to address that characterization of federal agency NEPA implementation.¹⁰² However, judicial expressions of policy views are non-binding, and they do not support or justify the EPA’s actions. First, these policy views were not grounded in any factual analysis. The Department of Interior, for example, has acknowledged that actions requiring an EIS are “a small proportion of all actions” and that the time to complete an EIS decreased from 4.4 years to 2.2 years over the last twelve years.¹⁰³ And second, the *Seven County* decision was intended as a “course correction” for courts, to bring “judicial review . . . back in line” by limiting judges’ ability to require agencies to consider specific environmental effects.¹⁰⁴ It was designed to limit what the Supreme Court perceived as lower courts’ second guessing of agency decisions, not a directive to federal agencies operating under a separate branch of government to course correct. It accordingly does not furnish a basis to support or justify the Rule’s attempts to shortchange environmental review and public participation.

Further, EPA’s explanation that it updated the NEPA regs to “align” with the Supreme Court’s decision and streamline its NEPA process does not constitute a reasoned explanation. *Seven Counties* clearly lays out no principle intended by Congress for the EPA to consider in implementing NEPA. And nothing in that decision overrides the text of the statute requiring agencies consider all reasonably foreseeable impacts.

In sum, *Seven County* does not justify the Rule’s limits on consideration of indirect and cumulative impacts. EPA should withdraw the Rule and draft language that comports with NEPA and the *Seven County* decision interpreting its application of the statute.

C. EPA Fails to Provide a Reasoned Explanation for Eliminating Fundamental NEPA Requirements

EPA has failed to provide a reasoned explanation for its failure to include fundamental NEPA requirements in the Rule. A core tenet of administrative law requires that “an agency changing its course... supply a reasoned analysis for the change.”¹⁰⁵ “Reasoned decision making... necessarily requires the agency to acknowledge and provide an adequate explanation for its departure from established precedent.”¹⁰⁶

¹⁰² 91 Fed. Reg. at 38,362 (quoting *Seven County*, 605 U.S. at 183).

¹⁰³ Department of the Interior, *Regulatory Impact Analysis for the Interim Final Rule National Environmental Policy Act Implementing Regulations*, RIN: 1090-AB18 (June 30, 2025), available at: https://docs.publicnow.com/viewDoc?filename=139931%5CEXT%5CE7AEDE332336C975D7E281185B5B7404B34C81D9_63F944875636216EC580363B788BA3A4DCF1D4B4.PDF (last visited July 20, 2026).

¹⁰⁴ *Seven County*, 605 U.S. at 184 (emphasis added).

¹⁰⁵ 463 U.S. at 42 (finding agency acted arbitrarily and capriciously in revoking the requirement that new motor vehicles include passive restraints).

¹⁰⁶ *Dillmon v. NTSB*, 588 F.3d 1085, 1089-90 (D.C. Cir. 2009) (citing *FCC v. Fox Television Stations, Inc.*, 566 U.S. 502, 515 (2009)).

In addition to the Supreme Court decision discussed above, EPA justifies the Rule on the basis it will “streamline its NEPA process.”¹⁰⁷ This fails to explain or provide a rational basis for EPA’s decision to jettison longstanding and fundamental NEPA requirements which had been included in the CEQ regulations and EPA’s current NEPA implementing regulations.

1. The Rule Fails to Adequately Consider Reliance Interests

Under the APA, in changing course, an agency must “assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.”¹⁰⁸ When an agency’s “prior policy has engendered serious reliance interests that must be taken into account,” it must “provide a more detailed justification [for its change in policy] than what would suffice for a new policy created on a blank slate.”¹⁰⁹ A “summary discussion” is insufficient where decades of reliance on an agency’s previous position exists.¹¹⁰ An “[u]nexplained inconsistency” in agency policy is “a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.”¹¹¹

Over their nearly fifty-year lifespan, significant reliance interests in NEPA-implementing regulations have developed across the nation. CEQ’s regulations were in place as legislative rules since 1978, and had been relied on by states, industry, and the public. EPA amended its NEPA regulations in 1979 “to make them consistent with the CEQ NEPA regulations” and those regulations have been in place, with amendments, ever since.¹¹² At the state level, the States drafted their own environmental laws in reliance on CEQ’s NEPA implementing regulations providing clarity as to the content of federal environmental reviews. The States conduct environmental reviews at the state level in coordination with federal agencies’ environmental reviews under NEPA. With the repeal of CEQ’s NEPA implementing regulations, and amendments proposed to EPA’s regulations in this Rule, States would need to reassess not only their own state environmental law processes but also the procedures applicable to and content of individual project environmental reviews to ensure they meet the statutory goals and requirements of state law. This Rule, combined with the repeal of CEQ’s regulations, would “necessitate systemic, significant changes” for all who interact with NEPA.¹¹³

Accordingly, EPA’s failure to identify and assess reliance interests is unlawful and renders its decision to amend its NEPA regulations without considering incorporating the prior CEQ regulations arbitrary and capricious. The States’ and the public’s reliance interests in stable and well-established NEPA regulations should not be waved off arbitrarily. The States have

¹⁰⁷ 91 Fed. Reg. at 38,362.

¹⁰⁸ *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891, 1914-15 (2020).

¹⁰⁹ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *see also DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 30 (2020) (longstanding policies may engender serious reliance interests that must be considered).

¹¹⁰ *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (finding reliance by industry on an agency position in place since 1978 required more than a summary discussion of the reasoning for the change).

¹¹¹ *Encino Motorcars, LLC*, 579 U.S. at 222.

¹¹² 91 Fed. Reg. at 38,360 (citing 44 Fed. Reg. 64174, 64177 (Nov. 6, 1979)).

¹¹³ *Encino Motorcars, LLC*, 579 U.S. at 222.

reliance interests in their use of resources, costs, and development of environmental review processes in planning projects subject to NEPA; these types of reliance interests are recognized under the APA.¹¹⁴ As explained above, the Rule would disrupt environmental reviews across the country where the States already have significant resources devoted to environmental review that relies upon NEPA implementation.

2. EPA Fails to Provide a Reasoned Explanation for Eliminating the Requirement to Consider Certain Effects

EPA fails to provide a reasoned explanation for proposing to eliminate core NEPA requirements through a redefinition of the term “effects.” EPA’s current regulations incorporate CEQ’s now rescinded regulations to include in the definition of effects “direct, indirect, and cumulative effects,”¹¹⁵ and clarify that “[e]ffects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, such as disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative. Effects also include effects on Tribal resources and climate change-related effects, including the contribution of a proposed action and its alternatives to climate change, and the reasonably foreseeable effects of climate change on the proposed action and its alternatives.”¹¹⁶

EPA provides no explanation, much less a reasoned or rational one, for removing “indirect” and “cumulative” from the “effects” definition. The inclusion of “indirect” and “cumulative” impacts in the effects definition originated in CEQ’s 1978 regulations, which the [EPA] incorporated into its NEPA regulations.¹¹⁷ EPA’s Rule instead states: “Effects should

¹¹⁴ See, e.g., *Texas v. United States*, 40 F.4th 205, 227-28 (5th Cir. 2022) (finding the Department of Homeland Security did not adequately consider relevant costs to the plaintiff States or their reliance interests in the pre-existing enforcement policy).

¹¹⁵ 40 CFR § 1508.1(g), as amended in 2022 by 87 Fed. Reg. 23453, 23469-70.

¹¹⁶ 40 CFR § 1508.1(g)(4), as amended in 2024 by 89 Fed. Reg. 35,442, 35,575.

¹¹⁷ 40 C.F.R. § 6.100 (b) (incorporating CEQ Regulations (40 CFR Parts 1500 through 1508); CEQ has long recognized the need to consider indirect and cumulative effects under NEPA. CEQ recognized in NEPA guidance issued in 1973—less than four years after NEPA was enacted—that indirect or “secondary” effects “may often be even more substantial than the primary effects of the original action itself.” Preparation of Environmental Impact Statements: Guidelines, 38 Fed. Reg. 20,550, 20,553 (Aug. 1, 1973). And even before that, CEQ recognized that the effects of many decisions can be “individually limited but cumulatively considerable.” Council on Environmental Quality, Statements on Proposed Federal Actions Affecting the Environment, 36 Fed. Reg. 7724–29 (Apr. 23, 1971) (The 1971 Guidelines were later revised in 1973 (38 Fed. Reg. 20549–62 (Aug. 1, 1973)) (codified at 40 C.F.R. § 1502)). And the EPA has for decades employed guidance to consider cumulative impacts. See U.S. Environmental Protection Agency, Office of Federal Activities, *Consideration Of Cumulative Impacts In EPA Review of NEPA Documents* (1999) <https://www.epa.gov/sites/default/files/2014-08/documents/cumulative.pdf> (last visited July 24, 2026) (“Because federal projects cause or are affected by cumulative impacts, this type of impact must be assessed in documents prepared under the National Environmental Policy Act (NEPA).”). This is because, as the CEQ recognized, “cumulative effects analysis is essential to effectively managing the consequences of human activities on the environment.” CEQ, *Considering Cumulative Effects Under The National Environmental Policy Act* (Jan. 1997)

generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include 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, or that would need to be initiated by a third party.”¹¹⁸ This definition of “effects” fails to expressly include cumulative and indirect effects, in violation of NEPA’s requirement that federal agencies consider “reasonably foreseeable” effects,¹¹⁹ and to address impacts to future as well as present generations.¹²⁰ This statutory mandate cannot be met without analyzing cumulative and indirect effects. Moreover, courts have consistently affirmed agencies’ legal obligation to consider these effects.¹²¹ Therefore, EPA must explain why it is abandoning the indirect and cumulative impact definitions.

NEPA’s statutory mandate to consider reasonably foreseeable effects also requires federal agencies to consider “disproportionate and adverse effects on communities with environmental justice concerns” and “climate-change related effects,” as set forth in the CEQ regulations implemented in accordance with the 2024 Rule.¹²² Similarly, the agency has not provided any explanation, much less a reasoned or rational one, for removing references to environmental justice and climate change.¹²³ Consistent with section 102(2)(C) of NEPA, consideration of environmental justice and climate change-related effects has long been part of NEPA’s analysis of reasonably foreseeable environmental impacts. “The impact of GHG emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct.”¹²⁴ With respect to environmental justice, NEPA makes it the federal government’s responsibility to “assure for *all* Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings,”¹²⁵ and states “that *each person* should enjoy a healthful environment.”¹²⁶ Consideration of how a proposed federal action might

https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf (last visited July 24, 2026) [hereinafter Considering Cumulative Effects].

¹¹⁸ 91 Fed. Reg. at 38,369.

¹¹⁹ 42 U.S.C. § 4332(C)(i)-(ii).

¹²⁰ 42 U.S.C. §§ 4321, 4331.

¹²¹ See, e.g., *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) (interpreting NEPA to require consideration of “cumulative or synergistic environmental impact.”); *NRDC v. Hodel*, 865 F.2d 288, 297–98 (D.C. Cir. 1988) (stating “NEPA, as interpreted by the courts, and CEQ regulations both require agencies to consider the cumulative impacts of proposed actions,” and holding that NEPA required the Secretary of the Interior to consider the cumulative impacts of offshore development in different areas of the Outer Continental Shelf).

¹²² 40 CFR § 1508.1(i)(4), as amended in 2024 by 89 Fed. Reg. 35,442, 35,575.

¹²³ See 40 C.F.R. § 6.100 (b) (incorporating definitions from 40 CFR § 1508.1(i)(4), as amended in 2024 by 89 Fed. Reg. 35,442, 35,575).

¹²⁴ *Ctr. for Biological Diversity v. Nat’l Highway Transportation Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008); see also 89 Fed. Reg. at 35452 n.58; *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 870 F.3d 1222 (10th Cir. 2017) (invalidating an EIS and Record of Decision for coal leases for failing to consider climate change).

¹²⁵ 42 U.S.C. § 4331(b)(2) (emphasis added).

¹²⁶ 42 U.S.C. § 4331(c) (emphasis added).

disproportionately affect *some* Americans more than others is thus a highly relevant consideration under the statute. NEPA’s focus on “the quality of the *human* environment,”¹²⁷ is also a concern advanced by analyzing the distribution of environmental burdens in the human environment. Courts have accordingly reviewed NEPA analyses to determine if they appropriately considered environmental justice impacts.¹²⁸

Lastly, EPA’s narrow redefinition of what effects should be considered does not follow the *Seven County* decision. In fact, the Court explicitly recognized that “environmental *effect* 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—for example, run-off into a river that flows many miles from the project and affects fish populations elsewhere, or emissions that travel downwind and predictably pollute other areas.”¹²⁹ The Court also recognized that “other projects may be interrelated and close in time and place to the project at hand” and thus require analysis in a NEPA document for a project.¹³⁰ In contrast, by stating that the term “effects” should not generally consider any environmental effects that are “remote in time, geographically remote, or the product of a lengthy causal chain,” the Rule would arbitrarily exclude the consideration of effects that the Supreme Court has specifically stated may fall within NEPA’s statutory requirements.¹³¹

3. EPA Fails to Provide a Reasoned Explanation for Curtailing Public Comment During the NEPA Process

Public involvement by States and our residents is critical to identifying and evaluating public health and environmental issues of local or statewide concern that may result from federal actions. Public participation further provides a critical tool for identifying alternatives that improve a proposed action or reduce its environmental impacts and serves to identify shortfalls in the agency’s analyses. Indeed, public participation is one of NEPA’s “twin aims.” The statute requires that a federal agency “consider every significant aspect of the environmental impact of a proposed action” and “inform the public that it has indeed considered environmental concerns in its decision-making process.”¹³² For these reasons, NEPA prioritizes democratic values by providing a central role for public participation in the environmental review process.¹³³

Consistent with the above principles, EPA’s current regulations require solicitation of public comments on draft EAs, proposed FONSI, draft EISs, and supplemental EISs, and re-evaluations of NEPA documents that are five years or older where the subject action had not yet

¹²⁷ 42 U.S.C. § 4332(c) (emphasis added).

¹²⁸ See, e.g., *Mid States Coalition for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 541 (8th Cir. 2003); *Sierra Club v. Fed. Energy Regulatory Comm.*, 867 F.3d 1357, 1370 (D.C. Cir. 2017).

¹²⁹ *Seven County*. 145 S. Ct. at 187 (emphasis in original).

¹³⁰ *Id.* at 190.

¹³¹ *Id.* at 187 (“[S]o-called indirect effects can sometimes fall within NEPA . . .”).

¹³² *Baltimore Gas & Elec. Co.*, 462 U.S. at 97 (internal citation omitted).

¹³³ *Kleppe*, 427 U.S. at 409 (quoting Conference Report on NEPA, 115 Cong. Rec. 40416 (1969) (internal quotations omitted)).

been implemented, from federal and state agencies, Tribes, and the public.¹³⁴ EPA's current regulations also include the requirement, from CEQ's former regulations, that the agency allow for public review and/or comment before adopting another agency's EA or EIS, or before adopting a new categorical exclusion.¹³⁵ In contrast, the Rule would not require solicitation of public comments on any of these environmental documents. For example, for draft EISs, they make opportunities for public comment optional by providing that EPA, "[d]uring the process of preparing an [EIS] . . . may request the comments of the public"¹³⁶ and that the "process of obtaining and requesting comments . . . may be undertaken at any time that is reasonable in the process of preparing the [EIS]"¹³⁷

The Rule's elimination of public participation opportunities would vitiate one of the core purposes of an environmental impact statement under NEPA, which is to "make available to the public, information of the proposed project's environmental impact and encourage public participation in the development of that information."¹³⁸ It would also introduce uncertainty and inconsistency into EPA's environmental review process by giving EPA the option of requesting comments without any objective criteria for making such a determination. If the public is not allowed to review and comment on a draft EIS or EA, EPA's assessment of environmental effects and rationale for its findings, before it is finalized, then the public's ability to engage in the development of information would be severely diminished. In turn, environmental impacts on low-income communities, communities of color, Tribal communities and resources, and other vulnerable communities and populations, which have often gone unaddressed, would be obscured. EPA provides no reasoned or rational explanation, or indeed, any explanation at all, for impairing the public's ability to engage in the NEPA decision-making process in this manner.

To the extent EPA seeks to justify this proposed change by citing a desire to "create efficiencies" in environmental reviews under NEPA, EPA has provided no reasoned or rational explanation for how it has chosen to balance the aims of efficiency and public participation. And it has failed to discuss important aspects of this change. Shutting down opportunities for public comment on draft NEPA documents and the adoption of CEs would make it more likely that EPA would miss potential impacts or misjudge the severity of potential impacts to resources. Lacking information gleaned from the public regarding such impacts, the agency would be unable to meet NEPA's requirement that it "consider every significant aspect of the environmental impact of a proposed action."¹³⁹ In addition, a reduction in public participation in a draft document may make it more likely that a final document would be litigated, thereby increasing inefficiencies in the NEPA process. Therefore, to comply with the APA, EPA must

¹³⁴ 40 C.F.R. §§ 6.203(b), (c), 6.200(h).

¹³⁵ See former 40 C.F.R. §§ 1506.3(a)(1), (c), 1507.3(c)(8).

¹³⁶ 91 Fed. Reg. at 38,373.

¹³⁷ *Id.*

¹³⁸ *Save Lake Washington v. Frank*, 641 F.2d 1330, 1334 (9th Cir. 1981) (quoting *Trout Unlimited v. Morton*, 509 F.2d 1276, 1287 (9th Cir. 1974)).

¹³⁹ *Baltimore Gas & Elec. Co.*, 462 U.S. at 97 (internal citation omitted).

explain why it is no longer requiring the solicitation of public comment on draft environmental documents.

4. The Proposed Rule’s Elimination of References to Specific Populations in Sections 6.203(a)(5), 6.203(c)(3)(v), and 6.204(b)(1) is Arbitrary and Capricious

As written, the Rule would eliminate references to “minority communities,” “low-income communities,” and “federally-recognized Indian tribe[s]” that require EPA and permit and funding applicants involve and study the known or expected environmental and human health impacts of a proposed action on these populations.¹⁴⁰ In so doing, it would harm EPA’s ability to comply with NEPA and abandon core environmental justice principles that EPA has long applied to promote the fair treatment of all people in environmental decision-making.

In enacting NEPA, Congress declared that “it is the continuing responsibility of the Federal Government to use all practicable means...to improve Federal plans, functions, programs and resources to...assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings.”¹⁴¹ In determining whether an agency has met its obligations under NEPA, courts ask whether the agency examined relevant data in order to consider and disclose environmental impacts of proposed actions.¹⁴²

EPA’s existing regulations ensure that the agency has opportunities when conducting environmental review under NEPA to obtain critical information from minority, low-income and Tribal communities about the potential human health or environmental impacts that proposed actions may have on them.¹⁴³ As EPA has recognized, “[a]dequate public participation” that involves these populations is crucial to “enhance the quality of [analysis] and to ensure that potentially affected parties are not overlooked and excluded from the process.”¹⁴⁴ Thus, EPA’s regulatory provisions requiring the involvement of and analysis of environmental impacts to vulnerable populations foster compliance with NEPA and fulfillment of the law’s aims to ensure all Americans enjoy a healthy environment.¹⁴⁵ However, the Rule fails to consider how the

¹⁴⁰ 91 Fed. Reg. at 38,364.

¹⁴¹ 42 U.S.C. § 4331.

¹⁴² 42 U.S.C. § 4332(C); *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1327 (D.C. Cir. 2021).

¹⁴³ 40 C.F.R. §§ 6.203(a)(5), 6.203(c)(3)(v).

¹⁴⁴ EPA, Final Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analyses, Apr. 1998, p. 46, https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_epa0498.pdf (last visited July 24, 2026).

¹⁴⁵ The provisions also support compliance by EPA and permit and funding applicants with civil rights laws, such as Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin by public and private entities that receive federal financial assistance. 42 U.S.C. §§ 2000d *et seq.* Further, it assists the federal government in meeting its federal trust responsibility to tribes, which may be implicated by proposed actions that impact Tribal resources.

removal of references to “minority communities,” “low-income communities,” and “federally-recognized Indian tribe[s]” would make it more difficult to achieve that aim.

Moreover, the federal government is obligated to act in a manner consistent with its trust responsibilities to sovereign Tribal Nations. EPA's NEPA regulations as written have long furthered that obligation. While EPA's consultation requirements remain intact, the erasure of language explicitly requiring the involvement and consideration of “federally-recognized Indian tribe[s]” by the agency, as well permit and funding applicants, undermines that government-to-government relationship.¹⁴⁶ EPA has not assessed the impacts the Rule may have on its ability to satisfy its trust obligations, thereby failing to address an important aspect of its Rule.

As justification for its removal of references to specific communities and populations, the Rule states only that it proposes to do so to comply with Executive Order 14173 *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, which rescinds Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. But E.O. 14173 does not require, nor provide support for, the Rule's proposed changes. EO 14173 orders agencies to “terminate all discriminatory and illegal preferences.” But EPA's regulatory provisions contain no preferences meeting this description. Rather, they require that EPA *include* low-income, minority, and Tribal communities in its public outreach, along with its outreach to the general population that may be affected by an action.¹⁴⁷ Thus, EPA has offered no rational basis for its proposed elimination of references to specific populations in its regulatory provisions and the proposed changes are arbitrary.¹⁴⁸

5. EPA Failed to Consider Important Aspects of the Problem

EPA also fails to consider multiple important issues in the Rule. An agency action is “arbitrary and capricious” under the APA where “the agency has...entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence before the agency.”¹⁴⁹ Thus, when an agency amends its regulations, it must demonstrate by reasoned explanation that it has considered the context and intent behind the original regulation.¹⁵⁰ In promulgating the Rule, EPA fails to consider the impact of amending its NEPA regulations in conjunction with the repeal of the CEQ regulations on the NEPA regulatory

¹⁴⁶ These risks are compounded by the Advisory Council on Historic Preservation's consideration of proposed revisions to regulations implementing Section 106 of the National Historic Preservation Act, which would significantly limit the application, scope, and meaningfulness of agencies' and applicants' obligations to consult with Tribal governments impacted by federal actions.

¹⁴⁷ 40 C.F.R. §§ 6.203(a)(5); 6,203(c)(3)(v).

¹⁴⁸ Further, because the elimination of references to specific populations proposed by the Rule would interfere with EPA's ability to ensure that proposed actions do not disproportionately harm those population, the proposed changes also undercuts EPA's ability to ensure compliance by its funding recipients with EPA's anti-discrimination regulations, which prohibit federal funding recipients from administering their EPA-funded programs or activities in a way that discriminates on the basis of race, color, national origin, or sex. See 40 C.F.R. § 7.35. For this reason too, the proposed changes are arbitrary and capricious.

¹⁴⁹ *State Farm*, 463 U.S. at 43.

¹⁵⁰ See *NAACP, Jefferson County Branch v. Donovan*, 765 F.2d 1178, 1185 (D.C. Cir. 1985).

landscape, and the value of retaining some or all of the CEQ regulations to provide a for NEPA implementation that, while adapting to developments in the law, maintains longstanding agency practice grounded in the statute.

EPA's failure to consider its prior reliance on the CEQ's regulations to inform its NEPA processes means that the Rule would also create inconsistencies in applying NEPA within the agency. Lacking the guidance provided by the CEQ regulations, which guidance has informed federal agency NEPA processes for decades, EPA would struggle to produce NEPA documents that treat various issues, including impacts and public involvement, in a consistent manner. The inconsistent decision-making that the new regulations would engender would lead to uncertainty in environmental reviews and project approvals. This would be detrimental to the stated goals of efficiency and certainty.

As mentioned above, the States collaborate and coordinate with EPA on environmental documents. This coordination can prevent duplication, reduce paperwork, and allow for the more efficient allocation of limited time and resources. But the Rule's changes to EPA's NEPA regulations in the Rule would make this coordination more difficult. The proposed changes to the EPA's consideration of environmental impacts, alternatives, public participation, and treatment of certain vulnerable populations discussed above would make it more difficult for State agencies to rely on the federal NEPA document to make its own environmental findings or to coordinate and collaborate with respect to the contents of environmental analyses required under state laws. Rather than expediting actions that require NEPA review, this would create inefficiencies that would likely delay them.

The resulting inconsistencies could also increase litigation. Currently, most NEPA analyses do not result in litigation.¹⁵¹ According to CEQ data, "the number of NEPA lawsuits filed annually has consistently been just above or below 100, with the exception of a period in the early- and mid-2000s."¹⁵² "Given that the number of federal actions potentially subject to NEPA is roughly 100,000 or so annually, litigation rates are exceedingly low."¹⁵³ Even for EISs, which represent a small fraction of NEPA review processes, on average 20% are challenged and just 13% are actually litigated."¹⁵⁴ However, as amended by the Rule, EPA's NEPA procedures would not be able to rely on the rescinded CEQ regulations that have been upheld time and again by the courts. EPA's environmental decision-making accordingly could be subject to an increasing number of legal challenges. Courts would need to determine whether EPA's environmental review of federal projects is consistent with NEPA without the benefit of the

¹⁵¹ U.S. Gov't Accountability Off., GAO-14-369, National Environmental Policy Act: Little Information Exists on NEPA Analyses [hereinafter "GAO Report"], at 19 (2014) <https://www.gao.gov/products/gao-14-369> (last visited July 24, 2026).

¹⁵² *Id.*

¹⁵³ David E. Adelman & Robert L. Glicksman, *Presidential and Judicial Politics in Environmental Litigation*, 50 *Ariz. St. L.J.* 4, 50 (2018).

¹⁵⁴ *Id.*; see also GAO Report, *supra* note 152, at 19; Richard Lazarus, *The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains*, 100 *GEO. L.J.* 1507, 1510 (2012) (as of 2012, the Supreme Court had decided only 17 NEPA cases).

long-standing procedures and interpretations utilized by the agency for decades in conjunction with CEQ's regulations. This would likely result in inconsistent rulings that would detract from, rather than contribute to, EPA's professed goal of increasing efficiencies in its NEPA process. EPA's failure to consider this important aspect of abandoning long-standing NEPA tenets embodied in the former CEQ regulations renders the Rule arbitrary and capricious.

Furthermore, the Rule fails to consider the inefficiencies and uncertainty that it the Rule would create with respect to the functional equivalence doctrine. As mentioned above, were EPA to apply this doctrine with respect to statutes identified in the Rule, such application would create a structural tension with the States' independent environmental review obligations under their environmental statutes. EPA's invocation of functional equivalence would not relieve the States of their own parallel review duties; it would instead increase the time and effort required to fulfill those duties. This increased time and effort would, in turn, delay federal actions to which the doctrine is applied. In the end, while application of the doctrine could in some instances "streamline" EPA's NEPA reviews by removing their preparation in certain instances, it would also create delays in the federal action or project that EPA exempted from NEPA.

Furthermore, by simply mentioning that courts have applied the doctrine with respect to certain statutes, the Rule would not provide for "consistency and predictability."¹⁵⁵ It would provide for precisely the opposite — inconsistent and unpredictable exclusions of NEPA — because it would apply to only limited EPA actions under limited circumstances in only certain jurisdictions. The Rule overstates the applicability of the functional equivalency doctrine when it states that "courts" have found the statutes it cites to be the functional equivalent of NEPA. The true states of affairs is that only some courts, in certain cases, have found, based on the facts present in those cases, that the functional equivalence doctrine applies with respect to the named statutes. Courts' acceptance and application of the doctrine varies from court to court, circuit to circuit, and case to case.¹⁵⁶ It is not the job of the EPA to resolve this split in authority by adopting regulations that favor one side of the debate. And the EPA's reliance on a patchwork of dubious applicability would create uncertainty, inconsistent application, and lead to litigation. The doctrine accordingly affords no consistency or predictability, an important aspect of the issue that EPA entirely ignores that that renders implausible its rationale for including the doctrine in the Rule.

6. The 30-Day Comment Period is Insufficient

Even if EPA intends to respond to comments before finalizing the Rule, 30 days for comment is insufficient. EPA's Rule fundamentally changes how the agency must consider the environmental impacts of major federal actions. 30 days is not nearly enough time for the public to properly understand and meaningfully respond to the Rule.

¹⁵⁵ 91 Fed. Reg. at 38,362.

¹⁵⁶ See, e.g., *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 651 (9th Cir. 2014) ("We have been skeptical of the 'functional equivalent' approach and have not used this language in our cases.").

EPA has determined that this rule is significant and that Executive Order 12866 applies. Therefore, EPA is required to abide by the terms of that Executive Order and provide a 60-day comment period. The Executive Order states that “each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.”¹⁵⁷ When EPA last amended its NEPA regulations in 2006, it similarly found that Executive Order 12866 applied and accordingly provided a 60 day comment period.¹⁵⁸ A minimum of 60 days should be provided for the public to comment on the significant legal and factual issues implicated in the Rule, as described above.

C. The Rule is Contrary to Law

EPA’s promulgation of its new NEPA procedures is contrary to law, and thus violates the APA,¹⁵⁹ because the procedures do not comply with the requirements of NEPA.

1. The Rule Would Unlawfully Limit EPA’s Responsibility to Consider “Indirect” and “Cumulative” Effects

As discussed above, EPA does not reasonably explain the absence of the terms “indirect” and “cumulative” from the “effects” definition in the Rule. For the same reasons that the redefinition of “effects” is unreasonable, it is also contrary to law. The analysis of cumulative and indirect effects is necessary to allow for the full consideration of significant impacts required by NEPA. The elimination of that analysis thus violates one of NEPA’s central mandates.

NEPA’s “primary function is information forcing, ... compelling federal agencies to take a hard and honest look at the environmental consequences of their decisions.”¹⁶⁰ NEPA requires federal agencies to prepare a “detailed statement” on the impacts of certain actions prior to making decisions.¹⁶¹ Section 102 of NEPA requires that agencies disclose “any adverse environmental effects which cannot be avoided” if the agency action goes forward.¹⁶² And NEPA requires agencies to consider the larger context, directing them to “recognize the worldwide and long-range character of environmental problems.”¹⁶³ NEPA’s legislative history, too, makes clear that, through NEPA, Congress sought to prevent agencies from making decisions without considering the larger context and incremental impact of projects on the environment. For instance, the Senate expressed concern that “[i]mportant decisions concerning

¹⁵⁷Exec. Order. 12,866, 58 Fed. Reg. 51735 (Oct. 4, 1993).

¹⁵⁸ 71 Fed. Reg. 76082 (Dec. 19, 2006).

¹⁵⁹ 5 U.S.C. § 706(2)(A).

¹⁶⁰ *Am. Rivers v. FERC*, 895 F.3d 32, 49 (D.C. Cir. 2018) (citations and internal quotation marks omitted).

¹⁶¹ 42 U.S.C. § 4332(2)(C).

¹⁶² *Id.* § 4332(2)(C)(ii).

¹⁶³ *Id.* § 4332(2)(F).

the use and the shape of man's future environment continue to be made in small but steady increments which perpetuate rather than avoid the recognized mistakes of previous decades.”¹⁶⁴

Consistent with NEPA's plain text and purpose, for over 40 years the courts and CEQ have interpreted NEPA's "hard look" requirement to demand consideration of direct, indirect, and cumulative effects.¹⁶⁵ Identifying and analyzing only direct effects that are close in time and geography to the proposed federal action ignores the true nature of most environmental problems, which Congress recognized as "worldwide and long-range" in character.¹⁶⁶ A robust analysis of a project's environmental effects is critical for informing decision makers and the public, particularly where projects may contribute incrementally to larger environmental or climate harms. Or, as the Second Circuit noted in *Hanly v. Kleindienst*, "[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. Hence the absolute, as well as comparative, effects of a major federal action must be considered."¹⁶⁷ And as discussed above, the *Seven County* decision does not change the principle that indirect and cumulative effects should be considered in appropriate cases.

The Rule, however, would eliminate a clear requirement to consider the three categories of effects, replacing them with a vague redefinition directing agencies not to consider effects that are "remote in time, geographically remote, or the product of a lengthy causal chain."¹⁶⁸ NEPA requires that an agency assess *all* of the project's reasonably foreseeable significant impacts,¹⁶⁹ and the exclusion of impacts that are "remote in time" or "geographically remote," would unlawfully take such "long range" environmental impacts out of NEPA's purview and undermine NEPA's mandate and purpose to ensure that agencies are fully equipped to make decisions concerning all significant environmental impacts.¹⁷⁰

Furthermore, the Rule's treatment of "remote" impacts also ignores the reality that some major federal actions would have adverse effects that are remote in time but also reasonably foreseeable if not certain. Examples include the proposed geologic repository for the disposal of

¹⁶⁴ S. Rep. No. 91-296, at 5.

¹⁶⁵ 40 C.F.R. §§ 1508.7, 1508.8, 1508.25(c); *Kleppe*, 427 U.S. at 410; *Hanly v. Kleindienst*, 471 F.2d 823, 830–31 (2d Cir. 1972); *Ecology Ctr. v. Castaneda*, 574 F.3d 652, 666 (9th Cir. 2009) ("NEPA requires the Forest Service to perform a cumulative impact analysis in approving projects.").

¹⁶⁶ 42 U.S.C. § 4332(2)(F); *see also* S. Rep. No. 91-296, at 5 (Senate report stating "[i]mportant decisions concerning the use and the shape of man's future environment continue to be made in small but steady increments which perpetuate rather than avoid the recognized mistakes of previous decades.").

¹⁶⁷ *Id.* at 831.

¹⁶⁸ 91 Fed. Reg. at 38,369.

¹⁶⁹ 42 U.S.C. § 4332. Moreover, CEQ previously stated that "[p]erhaps that most significant environmental impacts results from the combination of existing stresses on the environment with the individually minor, but cumulatively major, effects of multiple actions of over time." CEQ, *The Twenty-fifth Anniversary Report of the Council on Environmental Quality* (1997) at 29 https://clintonwhitehouse4.archives.gov/media/pdf/25th_ann.pdf (last visited July 24, 2026).

¹⁷⁰ *Robertson v. Methow Valley Citizens*, 490 U.S. 332, 349 (1989); 42 U.S.C. §§ 4332(2)(F), 4332(2)(C)(ii).

high-level radioactive wastes at Yucca Mountain, Nevada, identified in the Nuclear Waste Policy Act, as well as other interim storage options currently under development by the Department of Energy. Radioactive releases from the repository to the environment are not likely to occur for hundreds and possibly thousands of years, but after that, significant releases are certain to occur and must be evaluated.¹⁷¹

For these reasons, the Rule's replacement of the traditional definition of effects with a definition that does not include indirect or cumulative impacts would be unlawful and contrary to law. When conducting NEPA analyses, the agency is required to take the requisite "hard look" at all reasonably foreseeable impacts and the Rule should reflect this requirement.¹⁷²

2. The Rule Would Arbitrarily and Unlawfully Curtail Public Participation

As discussed above, participation is one of the "twin aims" of NEPA.¹⁷³ The process is rooted in statutory obligations that a federal agency "consider every significant aspect of the environmental impact of a proposed action" *and* "inform the public that it has indeed considered environmental concerns in its decision-making process."¹⁷⁴ Thus, NEPA requires that agencies prepare EISs to disclose and address potentially significant environmental effects of a project; and as stated above, one purpose of this document is to "make available to the public, information of the proposed project's environmental impact and encourage public participation in the development of that information."¹⁷⁵

By curtailing opportunities for public involvement, the Rule strikes at the heart of NEPA's purpose and environmental review requirements, in violation of NEPA and, accordingly, the APA.

3. The Rule would Unlawfully Curtail NEPA Analysis

The Rule would also unlawfully limit NEPA analysis by introducing additional language, including a list of statutes, for which NEPA review is presumed to be unnecessary under the functional equivalence doctrine.¹⁷⁶ The functional equivalence doctrine, however, has no statutory basis in NEPA. Moreover, in so doing, EPA fails to consider important aspects of the

¹⁷¹ The certainty of releases to the environment thousands of years into the future led both the EPA and the U.S. Nuclear Regulatory Commission to require the Department of Energy to estimate releases for one-million years. 40 C.F.R. § 197.20; 10 C.F.R. § 63.311; 40 C.F.R. § 197.12 (defining "period of geologic stability" as one million years following disposal).

¹⁷² *Kleppe*, 427 U.S. at 410 (citing NEPA and specifying that agencies have an obligation to evaluate the "cumulative or synergistic" environmental impacts that may occur when there are several pending actions that may have similar effects); *Ecology Ctr. v. Castaneda*, 574 F.3d 652, 666 (9th Cir. 2009) ("NEPA requires the Forest Service to perform a cumulative impact analysis in approving projects.").

¹⁷³ *Baltimore Gas & Elec. Co.*, 462 U.S. at 97 (internal citation omitted).

¹⁷⁴ *Id.*

¹⁷⁵ *Save Lake Washington v. Frank*, 641 F.2d 1330, 1334 (9th Cir. 1981) (quoting *Trout Unlimited v. Morton*, 509 F.2d 1276, 1287 (9th Cir. 1974)).

¹⁷⁶ 91 Fed. Reg. at 38,362

functional equivalence doctrine, including that other statutes fail to meet NEPA's procedural and substantive requirements. More often than not, there is an imperfect overlap. But the Rule fails to consider either the lack of statutory basis for or the practical drawbacks to the doctrine.

EPA, as a federal agency, is charged with implementing the laws passed by Congress. NEPA directs that all agencies of the Federal Government shall, to the fullest extent possible, utilize a systematic, interdisciplinary approach in planning and decisionmaking that may have an impact on the environment. To fulfill this mandate, Congress directed agencies to comply with NEPA except where compliance would be inconsistent with other statutory requirements¹⁷⁷ EPA has not provided any reasoned analysis in the proposed Rule to show that compliance with NEPA would be inconsistent with the statutes it has listed. Furthermore, in specific instances where Congress has decided that EPA should not apply NEPA alongside other statutory regimes, it has expressly exempted those actions from NEPA, for example, under the Clean Air Act and the Clean Water Act.¹⁷⁸ This shows that Congress knows how to create such exemptions when it intends to do so. Congress has not done so with respect to the statutes listed in the Rule, and EPA does not possess the authority to do absent such statutory direction.

¹⁷⁷ 42 U.S.C. § 4332 (C).

¹⁷⁸ 15 U.S.C. § 793(c)(1) ("No action taken under the Clean Air Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969."); 13 U.S.C. § 1371(c)(1) ("Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by § 1281 of this title, and the issuance of a permit under § 1342 of this title for the discharge of any pollutant by a new source as defined in § 1316 of this title, no action of the Administrator [of the Environmental Protection Agency (EPA)] taken pursuant to this chapter shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.").

IV. CONCLUSION

In conclusion, the States appreciate the opportunity to comment on this rulemaking. We urge the EPA to withdraw this proposed rule and issue a new proposal that effectuates NEPA's goals of public participation and informed decision making.

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