August 4, 2025

Via Regulations.gov
U.S. Department of the Interior
1849 C Street NW, MS 5020
Washington, D.C. 20240

Re: The American Exploration and Production Council's Comments in Response to the Department of Interior's Request for Comments on Rescissions and Revisions to its Regulations and Guidelines for Implementing the National Environmental Policy Act (90 Fed. Reg. 29,498 (July 3, 2025); DOI-2025-0005).

To the Department of Interior:

The American Exploration & Production Council ("AXPC") is pleased to submit these comments on the Department of Interior's ("DOI's" or "the Department's") interim final rule ("IFR") to partially rescind and update the Department's regulations implementing the National Environmental Policy Act ("NEPA" or "the Act").[1] AXPC appreciates the opportunity to provide comments on the RFI and revised/rescinded NEPA regulations as well as the procedures and provisions that DOI will henceforth compile in the Department of Interior Handbook: National Environmental Policy Act Implementing Procedures ("NEPA Handbook" or "Handbook.").[2]

As set forth in the detailed discussion in Section II that follows, AXPC recognizes the importance of DOI updating its NEPA implementation regulations and procedures in light of the Council for Environment Quality's ("CEQ's") rescission of its NEPA regulations,[3] and we support the Department's efforts to ensure that its implementation of NEPA fully incorporates the reforms Congress enacted through the Fiscal Responsibility Act of 2023 ("FRA"),[4] and conforms to the U.S. Supreme Court's ("Supreme Court's" or "the Court's") landmark decision in in *Seven County Infrastructure Coalition v. Eagle County, Colorado*.[5] As such, we support DOI's rescission of those aspects of the Department's regulations and guidelines that contributed to the transformation of NEPA from its roots as "a modest procedural requirement," into a significant "substantive roadblock" to "agency decisionmaking."[6]

AXPC also supports DOI's decision to retain and update the Department's regulations governing categorical exclusions, applicant- and contractor-prepared environmental documents, and emergency responses. We agree that these provisions are critical to ensuring that DOI bureaus are able to implement NEPA in an efficient and expedited manner.

Finally, while AXPC broadly supports the updates DOI made to the NEPA Handbook and understands DOI's interest in maintaining the majority of the Department's NEPA implementation

[1] 90 Fed. Reg. 29,498 (July 3, 2025)/DOI-2025-0005.
[2] 516 DM 1.
[3] 90 Fed. Reg. 10,610 (Feb. 25, 2025).
[4] Public Law 118–5 (Signed on June 3, 2023).
[5] ("*Seven County*") 145 S. Ct. 1497 (2025).
[6] 145 S. Ct. at 1507, 1513 (quotations omitted).

procedures in the Handbook to preserve the flexibility to respond to changes in the law,[7] we are concerned that subsequent administrations may wish to use this flexibility to more quickly return to implementing NEPA to achieve unrelated policy objectives or in a manner otherwise inconsistent with the Act's purely procedural nature. As such, we urge DOI to consider codifying at least those aspects of the NEPA Handbook that are critical to implementing NEPA consistent with congressional intent and which are unlikely to change.

I. AXPC'S INTERESTS

AXPC is a national trade association representing leading independent oil and natural gas exploration and production companies in the United States. AXPC companies support millions of Americans in high-paying jobs and invest a wealth of resources in our communities. Dedicated to safety, stewardship, and technological advancement, our members strive to deliver affordable, reliable energy to consumers while positively impacting the economy and the communities in which we live and operate. Our association works with regulators and policymakers to help them understand our operations so that they will be able to create sound, fact-based public policies that result in the safe and responsible exploration and production of America's vast oil and natural gas resources. Our goal is to provide technical and regulatory knowledge, making AXPC a rich repository of resources on the industry and the science behind our operations.

AXPC's members are uniquely positioned to provide comments on how the unwarranted expansion of NEPA review processes and governing regulations affect the development of projects that are vital to the American economy and national security. For example, as businesses with projects that are frequently the subject of NEPA reviews, AXPC's members have extensive experience working with various agencies during the NEPA review process and can provide a perspective that is particularly relevant to project-level NEPA analyses.

In light of our members' frequent hands-on experience with NEPA reviews, AXPC has long supported efforts to improve the efficiency and consistency of the NEPA review process while also reorienting those reviews so that they more clearly focus on achieving NEPA's central goal of improving agency decision-making. Decades of increasingly confusing and ambiguous analytical requirements, inconsistent agency approaches and procedures, and extensive litigation have unfortunately led to excessively lengthy NEPA review documents full of information that has no reasonable bearing on agencies' decision-making processes, and increasingly protracted review periods resulting from agencies compiling and reviewing information largely extraneous to the decisions they had to make. Since NEPA was first enacted in 1969, the average environmental impact statement ("EIS") expanded to 661 pages, with over 1,000 additional pages of appendix materials.[8] And the median time to complete these increasingly voluminous EISs increased to roughly 2.8 years.[9]

Stated differently:

> NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents (who may not always be entirely

[7] 90 Fed. Reg. at 29,500.
[8] Council on Environmental Quality, Length of Environmental Impact Statements (2013-2018) (June 12, 2020).
[9] Council on Environmental Quality, Environmental Impact Statement Timelines (2010-2024) (Jan. 13, 2024).

> motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects. Some project opponents have invoked NEPA and sought to enlist the courts in blocking or delaying even those projects that otherwise comply with all relevant substantive environmental laws.
>
> All of that has led to more agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation. Delay upon delay, so much so that the process sometimes seems to "borde[r] on the Kafkaesque." Fewer projects make it to the finish line. Indeed, fewer projects make it to the starting line. Those that survive often end up costing much more than is anticipated or necessary, both for the agency preparing the EIS and for the builder of the project. And that in turn means fewer and more expensive railroads, airports, wind turbines, transmission lines, dams, housing developments, highways, bridges, subways, stadiums, arenas, data centers, and the like. And that also means fewer jobs, as new projects become difficult to finance and build in a timely fashion.[10]

This is not what Congress intended when it enacted NEPA. Nor is it consistent with the NEPA reform Congress more recently included in the FRA in the hope of reducing agencies' unnecessarily excessive procedures and analyses, and reorienting agencies' implementation of NEPA to the efficient and effective decision-making tool that Congress intended.

AXPC therefore welcomes this administration's recognition of the need to substantially reform the manner in which federal agencies implement NEPA. Indeed, we believe that President Trump's January 20, 2025 Executive Order entitled *Unleashing American Energy* ("EO 14154"),[11] CEQ's February 19, 2025 Memorandum for Federal Departments and Agencies on the Implementation of the National Environmental Policy Act, CEQ's February 25, 2025 rescission of its NEPA regulations,[12] and this IFR, are critical to reigning in needlessly complex and protracted NEPA reviews and facilitating the efficient and statutorily-supported permitting and decision-making that are critical to America's domestic energy industry.

II. DETAILED COMMENTS

The rescissions and revisions that DOI included in this IFR are necessary and important for multiple reasons. As a practical matter, this IFR is necessary to ensure that DOI staff and bureaus have the guidance they need to lawfully and efficiently implement NEPA.

The NEPA implementation procedures DOI previously set forth in regulations, the NEPA Handbook, and a variety of other Department-wide and bureau-specific guidelines and instructional memoranda drafted to supplement a more extensive body of NEPA implementation procedures in CEQ's regulations, which have since been rescinded.[13] This rescission of CEQ's implementation regulations and EO 14154 under which CEQ's recission was promulgated plainly

[10] *Seven County*, 145 S. Ct. at 1507 (internal quotations and citations omitted).
[11] 90 Fed. Reg. 8,353 (Jan. 29, 2025).
[12] 90 Fed. Reg. 10,610 (Feb. 25, 2025).
[13] 90 Fed. Reg. 10,610 (Feb. 25, 2025).

necessitate that DOI develop agency-specific implementation procedures to backfill the void left by the absence of CEQ's regulations. The rescission of CEQ's NEPA implementation regulations also provides DOI an opportunity to implement a new, more statutorily sound approach to NEPA reviews similar to the "course correction" the Supreme Court's *Seven County* decision urged courts to adopt in reviewing NEPA challenges.[14]

The "course correction" DOI is adopting through this IFR reflects that NEPA is a procedural statute[15] that Congress expected would "inform agency decisionmaking;" it certainly did not intend the Act's procedural mandates to so "paralyze" agencies with extraneous analytical requirements that it would become effectively impossible for agency reviews to culminate in reasonably timely decisions.[16] Indeed, Congress's expectation that NEPA would "create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans"[17] cannot be reconciled with decades of implementing the Act such that its required reviews are now widely regarded as among the foremost obstacles to developing our nation's most critical infrastructure.[18]

Thus, fundamental to DOI's "course correction," this IFR faithfully implements and gives meaningful effect to the NEPA reforms Congress included in the FRA. Even though they were signed into law more than two years ago, these reforms, which included numerous amendments to NEPA to streamline the permitting process for infrastructure and energy projects. These statutory revisions, which included changes to the applicability of NEPA and the scope of agency reviews, page and time limits for reviews, and other streamlining measures, were not meaningfully implemented or utilized during the prior administration.

AXPC also supports DOI's inclusion in this IFR provisions to ensure that the Department's implementation of NEPA conforms to the Supreme Court's recent *Seven County* decision. In particular, the majority opinion held that NEPA does not obligate agencies to analyze environmental effects of upstream or downstream activities that are "separate in time or place" from the "project at hand," and that a "but for" relationship alone does not require an agency to explore a particular effect in an EIS.[19] Instead, relevant environmental effects must be "interrelated and close in time and place to the project at hand."[20]

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[14] *Seven County*, 145 S. Ct. at 1513-14.

[15] *Seven County*, 145 S. Ct. at 1507; *See also* 42 U.S.C. § 4332(2)(C) (agency obligation under NEPA is only to prepare detailed statement on "adverse environmental effects which cannot be avoided"); *See also Kleppe v. Sierra Club*, 427 U.S. 390, 406 (1976) ("The procedural duty imposed upon agencies by this section is quite precise…"); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 558 (1978) (NEPA's "mandate to the agencies is essentially procedural); *Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 737 (1998) ("NEPA… simply guarantees a particular procedure, not a particular result."); and *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 188 n.34 (1978) ("NEPA essentially imposes a procedural requirement on agencies, requiring them to engage in an extensive inquiry as to the effect of federal actions on the environment.").

[16] *Seven County*, 145 S. Ct. at 1513.

[17] 42 U.S.C. § 4331(a).

[18] *Seven County*, 145 S. Ct. at 1513.

[19] *Seven County*, 145 S. Ct. at 1517.

[20] *Seven County*, 145 S. Ct. at 1517.

These and other aspects of the Supreme Court's *Seven County* decision are essential to transforming NEPA implementation from its recent use as a "blunt and haphazard tool employed to . . . stop or at least slow down new infrastructure and construction projects" back to the "modest procedural requirement" Congress intended.[21] While, as discussed in Subsection II.b. below, AXPC believes that DOI's NEPA implementation procedures can be further amended to more fully incorporate the Court's holding in *Seven County*, we continue to view the rescissions and revisions in the IFR as a substantial and welcome improvement from the manner in which the Department has implemented NEPA in recent years.

a. DOI Reasonably Retained and Updated Important NEPA Implementation Regulations

Under this IFR, 31 of the 42 sections of DOI's NEPA implementation regulations were moved from 43 C.F.R. Part 46 to the Department's NEPA Handbook, six additional sections were rescinded entirely, and only five preexisting sections plus one new section of NEPA implementation procedures were retained in the Code of Federal Regulations.[22] The six NEPA implementation sections that now constitute the entirety of 43 C.F.R. Part 46 include: (1) emergency response provisions "to ensure that DOI can respond timely to any such event and to avoid any confusion regarding the continued validity of this already-established provision for action in emergency situations;"[23] (2) provisions regarding categorical exclusions and their use, which were retained and updated "to avoid any instability in these vital procedures or uncertainty about the continued validity of its already-established categorical exclusions;"[24] and, (3) provisions related to applicant and contractor preparation of environmental documents, which were retained and updated "to provide a durable framework for the use of such documents."[25] While AXPC supports DOI's decision to retain and update each of these provisions in 43 C.F.R. Part 46, in the subsections that follow we discuss only those provisions related to categorical exclusions and applicant/contractor preparation of environmental documents because these are the provisions that are most relevant to AXPC's members.

1. Categorical Exclusions

As the name implies, categorical exclusions exclude from protected NEPA review requirements certain categories of actions that Congress or agencies have determined normally do not significantly affect the environment. Therefore, consistent with E.O. 14154, which directs all agencies to prioritize efficiency, minimize delays, and alleviate any unnecessary regulatory burdens in the permitting process, DOI's retention of revised regulatory provisions relating to categorical exclusions helps ensure "that many agency actions are not subjected to the lengthy NEPA process."[26] In lieu of these extensive NEPA review processes, DOI can approve many projects using the significantly truncated process that the IRF revised and retained within the

[21] *Seven County*, 145 S. Ct. at 1507.
[22] June 30, 2025 Regulatory Impact Analysis for the Interim Final Rule National Environmental Policy Act Implementing Regulations ("RIA") at p. 6.
[23] 43 C.F.R. § 46.150.
[24] 43 C.F.R. § 46.205,§ 46.210, § 46.215.
[25] 43 C.F.R. § 46.105, § 46.107; 90 Fed. Reg. at 29,499.
[26] 90 Fed. Reg. at 29,501.

Department's NEPA regulations "for determining that a categorical exclusion applies and ensuring that no 'extraordinary circumstances' are present that would preclude reliance on the categorical exclusion."[27]

AXPC supports and appreciates DOI's retention of these important categorical exclusion provisions within its NEPA implementation regulations as well as the many regulatory updates to the provisions, which we believe can make categorical exclusions easier to establish, modify, and utilize. In particular, we support DOI's determination that the establishment, modification, or removal of categorical exclusions from the Department's NEPA procedures "does not itself have any environmental effects for purposes of NEPA."[28]

We also support the IFR's revised regulatory provisions that set forth a clearer and more streamlined processes through which "DOI bureaus may rely on categorical exclusion determinations made by other agencies, may apply multiple categorical exclusions to a single action, and may rely on a categorical exclusion administratively established or adopted by another DOI bureau."[29] These long-overdue regulatory updates are fully consistent with the FRA's 2023 NEPA reforms, which allowed agencies to "adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established…"[30]

AXPC also supports the IFR's revisions to 43 C.F.R. § 46.215, which lists the "extraordinary circumstances" that, if present preclude reliance on a categorical exclusion.[31] In particular, we support DOI's rescission of the ambiguous and inappropriately over-utilized Paragraph (c), which provides that an extraordinary circumstance exists if an action may "[h]ave highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources."[32]

We further support DOI's removal of regulatory provisions that prohibit categorical exclusions from being utilized for any action that may "[v]iolate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment,"[33] or "[h]ave a disproportionately high and adverse effect on low income or minority populations."[34][35] Although these may be important considerations relevant to the decisions ultimately rendered by DOI's bureaus, they are not relevant to DOI's purely procedural statutory obligation to assess whether a proposed action will have a significant environmental effect.

While AXPC supports the Department's elimination of these two vague and over-utilized prohibitions on the utilization of categorical exclusions, we urge DOI to recognize that 43 C.F.R. § 46.215 lists a number of other circumstances prohibiting use of categorical exclusions that

[27] 90 Fed. Reg. at 29,501.
[28] 90 Fed. Reg. at 29,501.
[29] 90 Fed. Reg. at 29,501.
[30] 42 U.S.C. § 4336c.
[31] 90 Fed. Reg. at 29,501.
[32] 43 C.F.R. § 46.215(c).
[33] 43 C.F.R. § 46.215(i).
[34] 43 C.F.R. § 46.215(j).
[35] 90 Fed. Reg. at 29,501.

seemingly not "extraordinary" and so subjective and ill-defined that they are prone to misuse. For instance, it is not clear when DOI or it bureaus could rely on 43 C.F.R. § 46.215 to determine that a proposed project has a significant impact on "public health or safety;"[36] "natural resources;"[37] listed and unlisted species or critical habitat;[38] or "the introduction, continued existence, or spread of noxious weeds or non-native invasive species."[39] Nor is it clear when a proposed project may "[h]ave highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks;"[40] "[e]stablish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects;"[41] or "[h]ave a direct relationship to other actions that implicate potentially significant environmental effects."[42]

These broad preclusions to utilizing categorical exclusions are sufficiently vague and subjective to seemingly allow a subsequent administration to refrain from utilizing categorical exclusions for proposed actions, like oil and natural gas projects, that do not align with administrative goals. But importantly, they also create substantial litigation risks by providing litigants insufficiently defined metrics on which to argue that the Department's utilization of a categorical exclusion was impermissible for failure to consider "extraordinary circumstances. As such, although AXPC supports DOI's effort to tighten and clarify the "extraordinary circumstances" that prevent DOI bureaus and applicants from realizing the important efficiencies provided by categorical exclusions, we urge DOI to take further action to ensure that the circumstances under which categorical exclusions cannot be utilized are truly "extraordinary."

In addition to those categorical exclusions established by DOI and its bureaus, Congress has enacted myriad important categorical exclusions through legislation. These too have often been underutilized or largely ignored by the Department in recent years. Given that DOI may not revise categorical exclusions established through legislation, in order to more effectively utilize these exclusions as Congress intended, the Department should require all DOI bureaus to transparently explain precisely why they declined to utilize a seemingly suitable categorical exclusion for a proposed action.

For instance, in Section 390 of the 2005 Energy Policy Act ("2005 EPA"), Congress categorically excluded five types of oil and natural gas activities from the requirement to develop environmental assessments ("EAs") and EISs based on Congress' determination that these activities do not individually or cumulatively have a significant effect on the human environment.[43] These five categories of activities included:

> (1) Individual surface disturbances of less than five acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.

[36] 43 C.F.R. § 46.215(a).
[37] 43 C.F.R. § 46.215 (b).
[38] 43 C.F.R. § 46.215 (g).
[39] 43 C.F.R. § 46.215 (i).
[40] 43 C.F.R. § 46.215 (c).
[41] 43 C.F.R. § 46.215 (d).
[42] 43 C.F.R. § 46.215 (d).
[43] 2005 EPA at Sec. 390(b).

(2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within five years prior to the date of spudding the well.

(3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within five years prior to the date of spudding the well.

(4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within five years prior to the date of placement of the pipeline.

(5) Maintenance of a minor activity, other than any construction of major renovation or a building or facility.[44]

Notwithstanding that Congress statutorily required these categorical exclusions to be utilized, the Bureau of Land Management ("BLM") and other agencies have expansively interpreted a provision of the 2005 EPA that allowed these exclusions to be rebutted only in "extraordinary circumstances," and as a result, have rarely ever applied these five statutory categorical exclusions. This is plainly not what Congress intended when it enacted Section 390 of the 2005 EPA, and it is entirely inconsistent with this Administration's directive that all agencies prioritize efficiency, minimize delays, and alleviate any unnecessary regulatory burdens in the permitting process.

i. Consider Further Streamlining Through Adoption of Permit-by-Rule Program

The overwhelming majority of BLM's permitting actions with respect to upstream oil and natural gas development involve the processing of Applications for Permits to Drill ("APDs"). Unfortunately, the APD process has long faced several well-documented challenges that result in delays, inefficiencies, and unpredictability. That is why, in response to DOI's recent request for comment on regulations to repeal or modify,[45] AXPC urged BLM to promulgate a rule to create a permit-by-rule system ("PBR System") for APDs.[46]

The PBR System would allow for the automatic approval of drilling permits in certain areas for qualified projects with low environmental concerns. The PBR System would put the burden on operators and BLM-approved contractors to de-risk the proposed activity on the front end and certify applicability and compliance with a standardized set of terms and conditions for certain qualified projects with low environmental concerns, including:

- Areas where there are existing oil and gas wells within a five (5) mile radius, and for which an approved land use plan or any environmental document was prepared within the last ten years pursuant to NEPA.

[44] 2005 EPA at Sec. 390(b).
[45] 90 Fed. Reg. 21,504 (May 20, 2025)/DOI-2025-0005.
[46] Comment ID: DOI-2025-0005-0241.

- Locations where drilling has occurred within the past 10 years prior, and the proposed operations do not increase the surface disturbance on the location or well pad site.
- Areas where there is a surface disturbance of less than ten (10) acres so long as the total surface disturbance on the lease is not greater than 150 acres.
- On state or fee surface areas in order to develop federal mineral interests that are or will be located within the boundaries of a communitization agreement or unit agreement.
- Areas where a categorical exclusion applies for oil and gas activities.
- Other areas where BLM has determined that development under a permit by rule is appropriate.

Additionally, this PBR approach would include:

- Authorization for third-party contractors to conduct and approve all necessary surveys; and
- The creation of Federal Minerals Access Waivers for mixed ownership scenarios.

As previously noted, NEPA reviews constitute a significant source of delay and inefficiency in the APD approval process. Therefore, AXPC also believes that DOI and BLM should prioritize efforts to improve the efficiency of NEPA reviews specifically in the context of the APD approval process.

2. Applicant- and Contractor-Prepared Environmental Documents

AXPC appreciates DOI's recognition that provisions allowing for applicant and contractor preparation of environmental documents are essential to improving the efficiency and timeliness of NEPA reviews. And we therefore support the Department's determination that an updated version of these provisions be retained within 43 C.F.R. Part 46.

In particular, AXPC supports the IFR's broadening of the regulations to include, as the FRA's NEPA reforms allow, procedures for applicant-preparation of not just EAs, but EISs as well.[47] And while we also support the IRF's addition of clearer and more efficient procedures for using and relying on applicant- and contractor-prepared environmental documents,[48] we are concerned that the updated regulations continue to require "Responsible Officials" at the bureaus to independently evaluate and approve each environmental document prepared by a contractor or applicant.

In AXPC members' experience, it is often the Responsible Officials' review, documentation, and approval of applicant- and contractor-prepared environmental documents that is the bottleneck in the NEPA review process. And, in many instances, the delay associated with the Responsible Officials' evaluation and approval role is substantial enough to negate all or most of the efficiencies applicant- and contractor-preparation of environmental documents would provide.

As such, AXPC urges DOI to consider revisions that would allow approved contractors to act as the Department's Responsible Official under certain safeguards. This could be accomplished

[47] 90 Fed. Reg. at 29,502.
[48] 90 Fed. Reg. at 29,502.

through a Department-wide regulatory allowance or by adding a provision allowing specific bureaus the flexibility to allow approved contractors to serve as Responsible Officials.

As relevant to AXPC members' interests, this reform is needed to help develop an efficient Permit-by-Rule program for APDs at BLM. Revising the Department's NEPA implementation procedures to allow BLM to use approved third-party contractors—experts in NEPA review and complex environmental analysis—to serve as Responsible Officials for the preparation of NEPA documents can help BLM satisfy the growing technical demands of modern environmental review and the need for greater efficiency in the NEPA process. Under the implementation approach that AXPC proposes DOI adopt:

- Qualified, approved contractors will be able to oversee, prepare, and certify NEPA documents, including EAs and EISs, on behalf of BLM.
- Contractors must enter into written agreements with BLM, certify no conflicts of interest, and work under agency oversight, ensuring integrity and transparency.
- By drawing on specialized expertise, the use of contractors as Responsible Officials is expected to enhance the quality of NEPA analyses, accelerate review timelines, and expand the BLM's technical capacity without straining agency resources.

In sum, by standardizing the application of categorical exclusions and leveraging the expertise of qualified contractors as Responsible Officials, AXPC believes that DOI and BLM can substantially reduce permitting times, costs, and regulatory burdens associated with NEPA compliance. These proposed changes will facilitate more efficient energy and infrastructure development, improve the consistency and quality of NEPA analyses, and ensure that the statutory intent behind categorical exclusions—to streamline routine approvals and reduce unnecessary litigation—is realized.

b. DOI Appropriately Identified Regulations and Implementation Procedures to Rescind and/or Revise

AXPC believes that DOI properly identified those NEPA implementation procedures that were necessary to update and retain within its NEPA Handbook. These retained and updated procedures are critical to implementing the reform measures Congress provided through the FRA and to ensuring greater conformity with the Supreme Court's directives as to how the Act should be interpreted and implemented.

For instance, DOI revised its NEPA Handbook to include the page limits and deadlines for environmental documents that Congress prescribed in the FRA.[49] Importantly, the Department also included guidance that we believe can assist in promoting compliance with the FRA's page limits and deadlines and help prevent the frequent circumvention of these requirements that was observed under the prior administration.

The revised Handbook also includes updates to implement each of the FRA's key provisions to streamline and improve the overall efficiency of agency NEPA reviews. These streamlining updates include provisions to more efficiently designate lead and cooperating agencies,[50] facilitate

[49] NEPA Handbook at pages 8-9 and 15-17.
[50] NEPA Handbook at pages 10-11.

increased reliance on existing environmental documents,[51] more effectively utilize programmatic reviews and tiering,[52] better integrate NEPA reviews with studies and analyses required under other statutes,[53] and eliminate unnecessary duplication with environmental reviews prepared pursuant to state, tribal, and local analogs to NEPA.[54] These Handbook updates, which are in addition to the streamlining measures DOI retained in its NEPA implementation regulations (*e.g.*, provisions related to categorical exclusions and contractor and applicant-prepared environmental documents) are critical to reigning in the needlessly complex and protracted NEPA reviews and facilitating the efficient and statutorily-supported permitting and decision-making that are critical to America's domestic energy industry.

While these procedural efficiencies are important and necessary, in practice, DOI and its bureaus would be unlikely to fully streamline their NEPA review processes without the ability to draw "reasonable and manageable" lines on the scope of analyses and alternatives they are required to consider. As such, AXPC supports the following revisions to DOI's Handbook:

- Requiring that the purpose and need statement be informed by the goals of the applicant;[55]

- Clarifying that "alternatives" are reasonable and therefore must be considered only if they "are technically and economically feasible, meet the purpose and need for the proposed action, are within the jurisdiction of the bureau, and, where applicable, meet the goals of the applicant;"[56]

- Defining "effects" or "impacts" to mean changes to the human environment that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives;[57]

- Clarifying that "but for" causation "is insufficient to make an agency responsible for a particular effect under NEPA," and that "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; and,"[58]

- Clarifying that "NEPA itself does not require or authorize a Responsible Official to impose any mitigation measures."[59]

These NEPA Handbook revisions are consistent with the *Seven County* decision, in which the majority opinion held that NEPA is a "purely procedural" statute that does not obligate agencies to analyze environmental effects of upstream or downstream activities that are "separate in time

[51] NEPA Handbook at pages 17-18.
[52] NEPA Handbook at pages 18-20.
[53] NEPA Handbook at page 21.
[54] NEPA Handbook at page 21.
[55] NEPA Handbook at page 14.
[56] NEPA Handbook at page 25.
[57] NEPA Handbook at page 24.
[58] NEPA Handbook at page 24.
[59] NEPA Handbook at page 15.

or place" from the "project at hand" and "fall outside the agency's regulatory authority."[60] The Court drew a distinction between indirect environmental effects (like "run-off into a river that flows many miles from the project and affects fish populations elsewhere") that should be considered as part of a NEPA review of a project, and environmental effects from "future or geographically separate projects," (like upstream oil production and downstream refining activities) that constitute separate independent projects that agencies are not required to review. In explaining what constitutes a separate project, the Court explained that "the textually mandated focus of NEPA is the 'proposed action.'"[61] In addition to the statutory text, the Court held that a "but for" relationship alone does not require an agency to explore a particular effect in an EIS. Instead, relevant environmental effects must be "interrelated and close in time and place to the project at hand." [62]

For similar reasons, AXPC also supports DOI's decision to fully rescind the following sections of the Department's prior NEPA implementation regulations:

- "Incorporating consensus-based management:"[63] This provision ignored that NEPA is purely a procedural statute[64] by limiting the substantive outcomes of the Department's NEPA review processes to those agreed to through a proscriptive and non-statutory outreach process.

- "Consideration of past actions in the analysis of cumulative effects"[65] and "Environmental effects abroad of major Federal actions:"[66] Both of these regulatory provisions impermissibly expanded the scope of DOI's consideration of effects and alternatives to include consideration of impacts "separate in time or place" from, and which do not share a reasonably close causal relationship to" the "project at hand."[67]

- "Identifying environmentally preferred alternatives:"[68] These provisions also ignored that NEPA is purely a procedural statute[69] by requiring identification of and effectively mandating bureaus select vaguely defined "environmentally preferable alternatives" to proposed actions, including those alternatives that may be beyond the Department's statutory authority to require.

- "Using adaptive management:"[70] This provision prescribed the means by which DOI's bureaus could impermissibly require applicants to mitigate the impacts of their proposed projects. DOI appropriately rescinded this regulatory provision because it ignored that the Act "does not mandate particular substantive environmental results; rather, it focuses

[60] *Seven County*, 145 S. Ct. at 1517.
[61] *Seven County*, 145 S. Ct. at 1517.
[62] *Seven County*, 145 S. Ct. at 1517.
[63] 43 C.F.R. § 46.110.
[64] *Seven County*, 145 S. Ct. at 1507.
[65] 43 C.F.R. § 46.115.
[66] 43 C.F.R. § 46.170.
[67] *Seven County*, 145 S. Ct. at 1517.
[68] 43 C.F.R. § 46.425 and 43 C.F.R. § 46.450.
[69] *Seven County*, 145 S. Ct. at 1507.
[70] 43 C.F.R. § 46.145.

> Government and public attention on the environmental effects of proposed agency action."[71]

While AXPC broadly supports each of these rescissions and revisions, we are concerned about the following provision in the NEPA Handbook's guidelines for developing both EAs and EISs:

> To the extent it assists in reasoned decision-making, the bureau may, but is not required to by NEPA, analyze environmental effects from other projects separate in time, or separate in place, or that fall outside of the bureau's regulatory authority, or that would have to be initiated by a third party.[72]

This provision would seemingly allow the Department's bureaus to analyze effects in a manner that contrary to the Supreme Court's *Seven County* decision and inconsistent with Congress's intent in enacting and subsequently amending NEPA. It is not clear what circumstances DOI is preserving this authority to address, but given the absence of reasonable limits or guidelines to the use of this discretion, we believe that a subsequent administration could readily rely on this provision to once again transform the Act's "a modest procedural requirement" into a significant "substantive roadblock" to "agency decisionmaking."[73] As such, AXPC respectfully urges DOI to remove or more precisely limit this provision of its NEPA handbook.

c. Consider Codifying Additional NEPA Implementation Procedures

AXPC supports DOI's efforts to consolidate and update the various departmental NEPA implementation procedures that the Department and its bureaus previously included in a wide and diverse variety of agency regulations, guidance, directives, and circulars. The diffuse and often unpredictable manner in which DOI previously set forth its NEPA requirements, made the DOI's NEPA implementation confusing, inconsistent, and needlessly difficult for applicants and Department personnel alike to navigate.

While AXPC supports DOI's consolidation of and substantive updates to its NEPA implementation procedures, we respectfully request the Department to consider codifying a larger proportion of its more centrally relevant implementation procedures in 43 C.F.R. Part 46. We do not dispute that "not maintaining its procedures as regulations will enable it to rapidly update these procedures in response to future court decisions . . . or Presidential directives[,]"[74]but we urge DOI to recognize that same ability to rapidly update NEPA implementation procedures may be used by a subsequent administration to quickly undermine this IRF's procedural reforms and impose new procedural and analytical requirements in pursuant of policy objectives that are not germane to departmental NEPA reviews or are otherwise inconsistent with the Act.

Codification of the Department's newly updated and reformed NEPA implementation procedures, on the other hand, can make those reforms more durable. And even if codification cannot

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[71] *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 68 (D.C. Cir. 2011) (quoting *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989)); *See also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

[72] NEPA Handbook at pages 8 and 15.

[73] 145 S. Ct. at 1507, 1513 (quotations omitted).

[74] 90 Fed. Reg. at 29,500.

altogether prevent a subsequent administration from undoing this Administration's NEPA reforms, at minimum, it will ensure that any subsequent changes to key NEPA implementation procedures are promulgated through more transparent processes that allow for stakeholder input. As such, AXPC urges DOI to consider codifying a larger proportion of its more centrally relevant implementation procedures in 43 C.F.R. Part 46.

III. CONCLUSION

AXPC appreciates the opportunity to provide these comments on DOI's IFR. As noted throughout these comments, we support the Department's efforts to implement NEPA in accordance with the text of the Act and consistent with the procedural role Congress intended.

AXPC believes that the IFR represents an important opportunity to reorient DOI's NEPA practices in a manner consistent with the Act's procedural purpose and to promote efficient, fair, transparent, and legally defensible permitting processes. As this Administration understands and appreciates, fully and effectively utilizing America's domestic energy resources requires federal agencies to abandon those NEPA practices and procedures that have fostered delay and uncertainty at the expense of reasoned decision-making.

Thank you again for your consideration of these comments. If you have any questions or would like to discuss these comments, please feel free to contact Wendy Kirchoff at 281-386-7324 or wendy.kirchoff@axpc.org.

Respectfully submitted,

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