prime mover institute

July 27, 2026

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Prime Mover Institute's Comment on the Proposed Rule, Revision of National Environmental Policy Act Implementing Procedures, 91 Fed. Reg. 38,359 [Docket EPA-HQ-AO-2025-1080; RIN 2010-AA16] (June 25, 2026)

Dear Administrator Zeldin:

Prime Mover Institute respectfully submits these comments in support of the Environmental Protection Agency's proposed revision of its procedures for implementing the National Environmental Policy Act (NEPA). Revision of National Environmental Policy Act Implementing Procedures, 91 Fed. Reg. 38,359 (June 25, 2026) (to be codified at 40 C.F.R. pt. 6). The proposed rule defines the scope of EPA's environmental review by two requirements that apply together — that an effect be reasonably foreseeable, and that it bear a reasonably close, proximate causal relationship to the proposed action — bringing EPA's procedures into line with the Supreme Court's 2025 decision in *Seven County Infrastructure Coalition v. Eagle County* and the decades of NEPA precedent behind it. Prime Mover Institute supports that reform and submits these comments to help EPA finalize the scope-of-effects definitions and make the narrowed standard durable against a future administration.

The Prime Mover Institute is a new public interest organization dedicated to advancing energy dominance in America. We work with coalition partners to engage in rulemaking processes with technical information and legal arguments, calling attention to the impacts regulation has on citizens, the grid, and the rule of law.

America stands at a crossroads. A legacy of bad policy and worse ideas threatens the nation with blackouts and bill hikes, right as demand for energy rises. In order for America to scale up its energy production and avoid the worst-case scenarios, we cannot cling to the policies and procedures that got us here. Fortunately, both policymakers and the private sector realize the need for dramatic change. And courts have begun to look more skeptically at accretions of arbitrary power, accretions that government officials used to thwart energy production and use. This points the way to a future of streamlined regulation, taxpayer savings, and cheaper, more abundant energy for all.

The main obstacle to energy dominance is what Robert Bryce calls the "anti-industry industry," the non-profits and lawyers dedicated to defending the status quo. These groups have used litigation, regulatory comments, and intimidation to forestall change. They will no doubt keep at it. But, despite their vast funding, they will not be able to maintain a policy regime that's so far out of touch with the American public and their elected representatives. So long, that is, that the advocates of energy dominance show up to defend their ideas.

In the words of Vaclav Smil, "prime movers are energy converters able to produce kinetic (mechanical) energy in forms suitable for human uses." In the same way, Prime Mover Institute helps convert insight into action.

Thank you for the opportunity to comment.

Respectfully submitted,

/Russell Greene/
Russell Greene
Executive Director
Prime Mover Institute

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Background

1. Congress enacted NEPA as a modest procedural statute, and the Supreme Court has enforced it as one.

NEPA is a fundamentally procedural statute. Enacted on January 1, 1970, Pub. L. No. 91-190, 83 Stat. 852, it directs a federal agency to study and disclose the environmental consequences of a proposed action, not to reach any particular result. Section 102(2)(C) requires the agency to prepare a detailed statement on the environmental effects of, and alternatives to, a proposed major federal action, so that the agency and the public are informed before the agency acts. 42 U.S.C. § 4332(2)(C).

The Supreme Court has enforced NEPA as a procedural statute from the start. NEPA's mandate is "essentially procedural." *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978). A court may "not stray beyond the judicial province . . . to impose upon the agency its own notion of which procedures are 'best,'" *id.* at 549, and once an agency has taken the required "hard look" and considered the environmental consequences, "the only role for a court is to insure that the agency has considered" them, because "NEPA requires no more." *Strycker's Bay Neighborhood Council v. Karlen*, 444 U.S. 223, 227–228 (1980) (per curiam). NEPA "does not mandate particular results, but simply prescribes the necessary process," and "merely prohibits uninformed — rather than unwise — agency action." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350–351 (1989).

2. NEPA grew far beyond that design and became a tool to delay and block projects.

Nevertheless, in practice, NEPA expanded well past the statute's procedural core. The Council on Environmental Quality's (CEQ) 1978 implementing regulations built out the required analysis — cumulative effects, indirect effects, and an expanding universe of alternatives — and a judicially developed "hard look" doctrine pressed agencies to analyze more, and at greater length, to guard against reversal. 43 Fed. Reg. 55,978 (Nov. 29, 1978) (former 40 CFR pts. 1500–1508). An environmental review that Congress designed to inform a decision became a document assembled to survive litigation.

CEQ's data shows that the cost of this shift has been to dramatically expand the scale, scope, and page count of NEPA reviews. The average final environmental impact statement (EIS) runs 661 pages, with appendices averaging more than a thousand additional pages, and fewer than one in ten is 150 pages or shorter. CEQ, *Length of Environmental Impact Statements (2013–2018)*, at 1–3 (June 12, 2020). The median EIS takes about 2.8 years from notice of intent to completion, and the outliers are far worse — fifteen EISs in CEQ's dataset took thirteen to fourteen years each. CEQ, *Environmental Impact Statement Timelines (2010–2024)*, at 1–5 (Jan. 13, 2025). The EIS is the most intensive tier of NEPA review, and it has become a chokepoint for the infrastructure, energy, and other projects that cannot proceed until the review ends.

The Supreme Court has reached the same conclusion. NEPA, the Court explained last Term, "has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents . . . to try to stop or at least slow down new infrastructure and construction projects." *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. ___, 145 S. Ct. 1497, 1513 (2025). "A 1970 legislative acorn has grown over the years into a judicial oak that has hindered infrastructure development 'under the guise' of just a little more process." *Id.* at 1514. Agencies wary of litigation "take ever more time and . . . prepare ever longer EISs," producing "[d]elay upon delay, so much so that the process sometimes seems to 'borde[r] on the Kafkaesque.'" *Id.* at 1513. The consequence, in the Court's words, is that "[f]ewer projects make it to the finish line. Indeed, fewer projects make it to the starting line." *Id.* at 1513–1514.

3. The Supreme Court has repeatedly corrected that expansion, most recently and most forcefully in *Seven County*.

The expansion has never reflected what NEPA requires, and the Supreme Court has said so at each turn. The recurring pattern in the Court's NEPA cases is that a lower court reads the statute to demand more — more analysis, more procedure, or a particular substantive outcome — and the Court reverses and restores NEPA's procedural boundaries.

That pattern runs through five decades of decisions, and it almost always begins with a court of appeals expanding NEPA and ends with the Supreme Court reining it back. When the D.C. Circuit ordered an agency to prepare a regional environmental impact statement on a schedule of the court's own design, the Court reversed, holding that the timing and scope of review are "task[s] assigned to the special competency of the appropriate agencies," not the courts. *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976). When the same circuit required an agency to adopt procedures beyond those the statute prescribed, the Court reversed again, warning that a court may "not stray beyond the judicial province . . . to impose upon the agency its own notion of which procedures are 'best.'" *Vermont Yankee*, 435 U.S. at 549. And when the Second Circuit read NEPA to require an agency to give environmental factors dispositive weight, the Court reversed per curiam: once the agency has considered the environmental consequences, "the only role for a court is to insure that the agency has considered" them, because "NEPA requires no more." *Strycker's Bay*, 444 U.S. at 227–228.

The pattern held as the challenges grew more creative. When the Ninth Circuit required a "worst case" analysis and a fully developed mitigation plan, the Court reversed, holding that NEPA "does not mandate particular results" and "simply prescribes the necessary process." *Methow Valley*, 490 U.S. at 350. When environmental groups argued that the Army Corps of Engineers had to prepare a second supplemental environmental impact statement for the Elk Creek Dam to address information that surfaced after the original review, and the Ninth Circuit agreed, the Court reversed. Whether new information is significant enough to require a supplemental statement, the Court held, is a fact-bound question that implicates agency expertise and is governed by a rule of reason, so a reviewing court must defer to "the informed discretion of the responsible federal agencies." *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 377 (1989). The Court did not hold that supplementation is never required; it held that the judgment whether to supplement belongs to the agency, not the court. *See Baltimore Gas & Electric Co. v. NRDC*, 462 U.S. 87, 103 (1983) (a reviewing court "must generally be at its most deferential" on scientific judgments). And when environmental groups obtained a preliminary injunction restricting the Navy's use of mid-frequency active sonar in antisubmarine-warfare training exercises off the coast of southern California, on the ground that the Navy had proceeded without a completed EIS, the Court reversed once more. Because "NEPA itself does not mandate particular results" and imposes "only procedural requirements," a plaintiff's showing that the Navy still owed an EIS did not entitle it to an injunction halting the training; injunctive relief, the Court reaffirmed, "does not follow from success on the merits as a matter of course." *Winter v. NRDC*, 555 U.S. 7, 23, 32 (2008). Across these decisions, the Court reversed each expansion and restored NEPA's procedural limits.

Seven County is the most recent and most emphatic statement of that principle. The Court reversed without dissent, and the majority held that "the central principle of judicial review in NEPA cases is deference" and called for "[a] course correction . . . to bring judicial review under NEPA back in line with the statutory text and common sense." 145 S. Ct. at 1511, 1514 (Gorsuch, J., not participating). NEPA, the Court explained, "is a procedural cross-check, not a substantive roadblock," and its "goal . . . is to inform agency decisionmaking, not to paralyze it." *Id.* at 1507. Courts, the Court instructed, "should afford substantial deference and should not micromanage" an agency's scoping choices "so long as they fall within a broad zone of reasonableness," *id.* at 1513, and "should defer to agencies' decisions about where to draw the line — including . . . how far to go in considering indirect environmental effects" and "whether to analyze environmental effects from other projects separate in time or place," *id.* at 1513. The Court then fixed the outer limit of the analysis an agency owes. NEPA's scope reaches the proposed action — the project at hand — and its reasonably foreseeable effects, and does not extend to the effects of separate projects, which "break[] the chain of proximate causation." *Id.* at 1516. A merely foreseeable effect is not enough; the project must be a proximate cause of the effect, bearing a "reasonably close causal relationship" to it, and "a court may not invoke but-for causation or mere foreseeability" to compel analysis. *Id.* at 1516, 1517.

That causation standard is not new. It descends from the line the Court has applied to NEPA for four decades. *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), holds that a "but for" relationship is insufficient and that an agency which cannot prevent an effect "due to its limited statutory authority over the relevant actions . . . cannot be considered a legally relevant 'cause' of the effect." *Id.* at 767, 770. *Seven County* called that authority-to-prevent principle "one of the more important sentences in the NEPA canon," 145 S. Ct. at 1516. *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983), holds that an effect whose causal chain is "too attenuated" from the action lies outside NEPA. *Seven County* drew these limits together, and the Justices concurring in the judgment agreed at least that an effect the agency lacks authority to prevent is outside NEPA's scope, emphasizing that "[e]ven a foreseeable environmental effect is outside of NEPA's scope if the agency could not lawfully decide to modify or reject the proposed action on account of it." *Seven County*, 145 S. Ct. at 1524 (Sotomayor, J., concurring in the judgment, joined by Kagan and Jackson, JJ.).

4. With the CEQ regulations rescinded, EPA's Part 6 definitions now govern its NEPA reviews, and the proposed rule brings them into line with the Court and Congress.

Reform of NEPA is a project both political branches, and both parties, have taken up. Congress reached that judgment on a bipartisan basis in the Fiscal Responsibility Act of 2023 — negotiated between a Republican House, a Democratic Senate, and a Democratic President — which amended NEPA to direct agencies to analyze "reasonably foreseeable" effects, added a definitions section, and imposed page limits and one- and two-year deadlines on environmental reviews. Pub. L. No. 118-5, div. C, tit. III, § 321 (2023) (codified at 42 U.S.C. §§ 4336–4336e). The term "reasonably foreseeable" now appears in the statute, but Congress did not define it; the definitions section defines other terms and leaves this one to agency implementation. 42 U.S.C. § 4336e. Congress and the Executive have continued in that direction since — Congress by creating an optional, fee-based track for expedited environmental review, Pub. L. No. 119-21, § 60026 (2025) (adding NEPA § 112, codified at 42 U.S.C. § 4336f), and the Executive by directing agencies to expedite and simplify their NEPA procedures, E.O. 14,154, 90 Fed. Reg. 8353 (Jan. 29, 2025); E.O. 14,192, 90 Fed. Reg. 9065 (Feb. 6, 2025).

Most consequentially for this rulemaking, the government-wide regulations that supplied NEPA's definitions for decades no longer exist. CEQ has rescinded its regulations in full, after the D.C. Circuit held that CEQ lacked statutory authority to issue binding NEPA regulations at all. 90 Fed. Reg. 10,610 (Feb. 25, 2025) (interim final rule); 91 Fed. Reg. 618 (Jan. 8, 2026) (final rule); *see Marin Audubon Society v. FAA*, 121 F.4th 902, 912 (D.C. Cir. 2024). Each agency now implements NEPA through its own procedures, and a coordinated set of agencies issued revised procedures in 2025. *See, e.g.*, 90 Fed. Reg. 29,676 (DOE); 90 Fed. Reg. 29,632 (USDA); 90 Fed. Reg. 29,465 (Army Corps) (each July 3, 2025). EPA's Part 6 procedures are now the operative source of the definitions that govern EPA's own NEPA reviews. The meaning EPA gives those definitions is the meaning that controls, where once a CEQ template stood behind them.

The proposed rule brings EPA's procedures into line with the Court and Congress. EPA adds "reasonably foreseeable" before "environmental effects" throughout Part 6 and, for greater clarity, defines both "effects or impacts" and "reasonably foreseeable." 91 Fed. Reg. at 38,362–63. Proposed § 6.102(b)(6) defines effects as changes to the human environment "that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives." Proposed § 6.102(b)(6)(ii) writes the proximate-cause limits into the text. A "but for" causal relationship "is insufficient," effects reached only through an attenuated causal chain generally are not considered, and effects the agency cannot prevent, that would occur regardless of the action, or that a third party would initiate are excluded. 91 Fed. Reg. at 38,369. Proposed § 6.102(b)(21) defines "reasonably foreseeable" as an effect "sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision." 91 Fed. Reg. at 38,370–71. These comments address the scope-of-effects definitions in § 6.102 and the standard EPA applies when it participates in another agency's review as a cooperating agency and when it reviews other agencies' actions under Clean Air Act § 309. The proposed rule makes other changes to Part 6 — including page limits, review deadlines, categorical-exclusion procedures, and a severability clause — that these comments fdo not address.

Summary of Argument

Prime Mover Institute supports the proposed rule. EPA is right to tie the scope of environmental review to a project's reasonably foreseeable effects and to define that scope by proximate causation, consistent with *Seven County* and the decades of precedent behind it. These comments urge EPA to finalize the scope-of-effects definitions and to make three additions that would strengthen the proposed rule.

EPA's proposed definitions already do most of the work. Section 6.102(b)(6) makes reasonable foreseeability and a reasonably close causal relationship cumulative requirements, and § 6.102(b)(6)(ii) states the proximate-cause limits.

EPA should confirm in the final rule's preamble that both requirements must be satisfied — that foreseeability alone does not suffice — and that § 6.102(b)(6)(ii) codifies the proximate-cause limitation of *Public Citizen*, *Metropolitan Edison*, and *Seven County*. EPA should also strengthen the causal text by removing a discretionary "generally" and codifying the separate-project rule, drawing on the tighter formulations the Department of Energy has already adopted.

EPA should confirm that it applies the same standard when it participates in another agency's review as a cooperating agency, so that the government speaks with one voice on the question that drives the most litigation.

And EPA should commit to a separate rulemaking under Clean Air Act § 309 that codifies the same causation-anchored standard for EPA's review of other agencies' actions, so that the standard does not depend on guidance a later administration can withdraw.

Each recommendation reinforces the rule EPA has proposed; none asks EPA to change course.

Comments of Prime Mover Institute

1. EPA should finalize its narrowed scope-of-effects definitions and make the proximate-cause requirement explicit in the final rule's preamble and text.

EPA is right to define the scope of NEPA review by reasonable foreseeability and proximate causation, and Prime Mover Institute urges EPA to finalize the § 6.102 definitions. The definitions already state the law correctly. Three additions, each drawn from authority EPA already relies on or from a sister agency's parallel rule, would place the narrow reading beyond serious dispute and make it far harder for a later court or administration to unsettle. The preamble statement described in § 1.2 is the most important and the least burdensome of the three, and EPA can adopt it even if it declines to reopen the regulatory text.

1.1. EPA's proposed definitions correctly make reasonable foreseeability and proximate causation cumulative requirements, consistent with *Seven County*.

The proposed definitions require both that an effect be reasonably foreseeable and that it bear a reasonably close causal relationship to the proposed action. Section 6.102(b)(6) defines *effects* as changes "that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives," joining the two requirements with the conjunction "and." 91 Fed. Reg. at 38,369. Section 6.102(b)(6)(ii) then supplies the content of the causal requirement, excluding effects connected to the action only by "but for" causation, effects that are remove in time or space or the product of a lengthy causal chain, and effects the agency cannot prevent, that would occur regardless of the action, or that a third party would initiate. *Id.* Read together, the two provisions place an effect within the scope of review only when it satisfies both a likelihood requirement and a causation requirement.

That is the correct reading of NEPA after *Seven County*. As set out above, the Court held that foreseeability alone does not bring an effect within NEPA and that proximate cause governs, so that an effect must bear a "reasonably close causal relationship" to the project and "a court may not invoke but-for causation or mere foreseeability." *Seven County*, 145 S. Ct. at 1516, 1517; *see Public Citizen*, 541 U.S. at 767, 770; *Metropolitan Edison*, 460 U.S. at 774. EPA's definitions track that holding, and Prime Mover Institute supports them.

1.2. EPA should confirm in the preamble that an effect falls within NEPA only if it is both reasonably foreseeable and connected to the action by a reasonably close causal relationship, and that § 6.102(b)(6)(ii) codifies the

Public Citizen / Metropolitan Edison proximate-cause limitation.

EPA should state expressly that its two scope requirements — that an effect be reasonably foreseeable, and that it bear a reasonably close causal relationship to the proposed action — are cumulative, because the rule houses them in separate definitions. The likelihood requirement appears in the definition of "reasonably foreseeable" in § 6.102(b)(21),[1] and the causation requirement appears in the definition of "effects or impacts" in § 6.102(b)(6). EPA should clarify that the two in fact operate as a single, cumulative test by stating in the final rule's preamble that an effect falls within the scope of EPA's NEPA review only if it is both reasonably foreseeable and connected to the proposed action by a reasonably close causal relationship, and that a showing of foreseeability alone does not suffice. That express link matters because "reasonably foreseeable" recurs throughout Part 6; a reader who applied its definition without also applying the causation requirement of § 6.102(b)(6) would read the scope of review too broadly.

EPA should also identify the source of the causal requirement. The preamble invokes *Seven County* to explain why EPA adds the "reasonably foreseeable" modifier, but EPA should fully explain the proximate-cause decisions from which § 6.102(b)(6)(ii)'s language is drawn, and the word "proximate" does not appear in the rule. The operative terms of § 6.102(b)(6)(ii) — the "reasonably close causal relationship" standard, the insufficiency of "but for" causation, and the exclusion of effects connected only through an attenuated causal chain and effects beyond the agency's authority — come from *Public Citizen* and *Metropolitan Edison*, as further developed by the Court in *Seven County*. EPA should connect the dots in its preamble to the final rule, stating that § 6.102(b)(6)(ii) codifies the proximate-cause limitation the Supreme Court applied in *Seven County*, *Public Citizen*, and *Metropolitan Edison*.

The two courts of appeals to reach the question before *Seven County* split on it, and the difference lay entirely in which requirement each treated as controlling. Both asked whether the Nuclear Regulatory Commission, in licensing a nuclear facility, had to analyze the environmental effects of a hypothetical terrorist attack. The Ninth Circuit, foregrounding foreseeability and declining to apply the "reasonably close causal relationship" test, held that the possibility of an attack was not so remote and speculative as to fall outside NEPA, and required the analysis. *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1029–1031 (9th Cir. 2006). The Third Circuit, applying the proximate-cause test of *Public Citizen*

[1] Prime Mover Institute respectfully notes a minor clerical error: EPA's preamble refers to this definition as § 6.102(b)(20), but the codified text places it at § 6.102(b)(21).

and *Metropolitan Edison*, reached the opposite result: no reasonably close causal relationship existed, because a terrorist attack requires the intervening acts of a third-party criminal and the failure of the agencies charged with preventing it, which break the causal chain. *New Jersey Department of Environmental Protection v. NRC*, 561 F.3d 132, 137–140 (3d Cir. 2009). *Seven County* adopts the proximate-cause approach the Third Circuit applied and rejects the foreseeability-only path the Ninth Circuit took: foreseeability alone does not suffice, and proximate cause governs. A preamble confirming that § 6.102(b)(6)(ii) applies the same proximate-cause requirement puts the narrower reading beyond dispute.

The "ordinary prudence" language EPA proposes is itself a limiting standard, not an expansive one, which is a further reason to anchor it to the causation requirement. The formulation originates in *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992), which used the prudent-person test to *exclude* effects that are "highly speculative or indefinite," *id.* at 768, and affirmed the adequacy of the agency's review. Reading § 6.102(b)(21) as a foreseeability-only expansion lever would turn the standard against its own origin. Paired with the proximate-cause requirement, as *Seven County* directs, "ordinary prudence" does the cabining work it was written to do.

1.3. EPA should strengthen the causation text and adopt the tighter formulation the Department of Energy has already used.

EPA should make two conforming refinements to the causal text. First, § 6.102(b)(6)(ii) provides that effects connected only through an attenuated causal chain "should generally not be considered." 91 Fed. Reg. at 38,369. The words "should" and "generally" state a discretionary default rather than the rule *Seven County* announced, under which an attenuated causal chain places an effect outside NEPA. EPA should delete "generally," and should consider replacing "should generally not be considered" with a direct exclusion, so that the text tracks the holding and forecloses the case-by-case reintroduction of effects connected only through an attenuated causal chain. Second, EPA should codify the separate-project rule in the text of § 6.102(b)(6)(ii). *Seven County* held that an agency need not analyze the effects of a project separate in time or place from the action at hand, 145 S. Ct. at 1516, and the preamble recites that limit, but the operative text does not state it.

EPA need not write these refinements from scratch, because the Department of Energy adopted both in its 2025 NEPA implementing procedures. DOE directs that it "shall analyze only those reasonably foreseeable environmental effects that have a reasonably close causal relationship to the proposed agency action and alternatives," placing the cumulative, exclusive test in the operative text. U.S. Dep't of Energy, National Environmental Policy Act Implementing Procedures §

3.1(a), 90 Fed. Reg. 29,676, 29,697 (July 3, 2025); *see also* DOE, National Environmental Policy Act Implementing Procedures § 3.1(a)–(b) (rev. July 13, 2026), https://www.energy.gov/sites/default/files/2026-07/DOE%20NEPA%20Implementing%20Procedures%2020260713.pdf (identical language). DOE separately writes the separate-project rule into its procedures, providing that "when the effects of an agency action arise from a separate project . . . NEPA does not require the agency to evaluate the effects of that separate project." *Id.* § 3.1(b), 90 Fed. Reg. at 29,697. EPA should consider conforming § 6.102(b)(6)(ii) to these formulations. Because the proposed rule already sets out the § 6.102(b)(6)(ii) causal text and recites the separate-project limit in its preamble, tightening that text is a logical outgrowth of the proposal. Adopting the Department of Energy's sharper formulation also keeps EPA consistent with a sister agency and removes discretion that a later decisionmaker could use to widen the scope of review.

Taken together, these steps confirm a scope-of-effects definition that already states the law and place its narrow reading beyond reasonable dispute. The preamble statement in § 1.2 does the essential work at no cost to EPA's discretion; the textual refinements in § 1.3 remove the openings through which an expansive reading could return. None asks EPA to change course — each makes the rule it has proposed more durable.

2. EPA should apply the same reasonably-foreseeable standard when it participates as a cooperating agency.

EPA should confirm that the reasonably-foreseeable and proximate-cause standards it adopts as a lead agency also govern its work as a cooperating agency. EPA shapes the scope of NEPA review in more than one role. As the lead agency, EPA prepares the environmental document and applies the § 6.102 definitions directly. As a cooperating agency, EPA contributes analysis to another agency's document, and the proposed rule says little about the standard that governs that contribution; § 6.202 addresses cooperating-agency participation largely by cross-referencing NEPA § 107, 42 U.S.C. § 4336a, without stating an EPA-specific scope standard. EPA should confirm that when it participates as a cooperating agency, it applies the same reasonably-foreseeable and proximate-cause standard defined in § 6.102.

One standard across both roles does more than produce coherence; it closes a channel through which a future administration could reintroduce an expansive view of NEPA. If EPA's cooperating-agency contributions are not tied to the same proximate-cause standard, a later EPA inclined to read NEPA broadly could press for analysis of speculative effects, or of effects connected to the action only through an attenuated causal chain, in another agency's document even as its own lead-agency rule treats that analysis as outside NEPA's scope. Confirming a single standard now limits that opening. The Army Corps of Engineers is among the few that address the role directly. *See* 33 C.F.R. § 333.17(b). Confirming that EPA carries its narrow standard into cooperating-agency work keeps the government speaking with one voice on the question that generates the most NEPA litigation.

Where EPA has determined that a project's effects are not reasonably foreseeable, EPA should be free to calibrate its own contribution to the effects that genuinely warrant its expertise. The lead agency, not EPA, sets the overall scope of a joint review under NEPA § 107, so this calibration reaches only EPA's own participation. An effect that is not reasonably foreseeable is not one NEPA requires any agency to analyze, so EPA's declining to devote its own resources to such an effect leaves no gap the law requires EPA to fill. EPA already applies a version of this discipline in its international procedures, under which a responsible official who cannot provide the involvement a lead agency requests informs the lead agency in writing. *See* Proposed § 6.404(b). Extending that calibrated approach to domestic reviews, keyed to EPA's own reasonably-foreseeable determination, would reduce duplication and delay without lowering the quality of review where it matters. The aim is to focus EPA's expertise on the effects that genuinely warrant it, consistent with the analysis NEPA actually requires.

3. EPA should commit to a standalone Clean Air Act § 309 rulemaking that codifies the same causation-anchored standard.

EPA should extend the same causation-anchored standard to a third channel — its Clean Air Act § 309 review authority — through a separate rulemaking. Section 309 directs EPA to "review and comment in writing on the environmental impact" of other agencies' actions and to refer to the Council on Environmental Quality any matter EPA determines is environmentally unsatisfactory. 42 U.S.C. § 7609(a), (b). That authority rests on the Clean Air Act rather than NEPA, so it sits outside this rulemaking and should not be folded into it. EPA has already made a strong start. Its recent § 309 guidance reflects the same causation discipline the proposed Part 6 rule brings to EPA's own actions, and Prime Mover Institute commends it.

That start rests only on guidance, however. A June 24, 2026 memorandum directs EPA's § 309 reviewers to tether their comments to EPA's statutory authority and to avoid "overly broad expressions of preference for any policy or course of action not necessitated by EPA's relevant statutory authorities," but it states that it is "intended solely as guidance" and that EPA "may decide to follow the guidance provided in this document or to act at variance with the guidance." A standard set out that way can be withdrawn at a change of administration, without notice or process.

EPA should therefore codify that standard for its § 309 reviews through notice-and-comment rulemaking, drawing on its general rulemaking authority under Clean Air Act § 301(a)(1), 42 U.S.C. § 7601(a)(1). Codification would not place the standard beyond recall — a later administration could revise it — but any change would then require notice, comment, and a reasoned explanation subject to judicial review, against the backdrop of *Seven County*. That added friction is the point. It makes the standard more durable and narrows the channel through which an expansive view of foreseeable effects could otherwise reenter EPA's practice and undercut the reform this rule accomplishes.

EPA should therefore commit to a notice-and-comment rulemaking that codifies, for its § 309 reviews, the same causation-anchored scope standard the Agency adopts for its own actions in this rule. Codification would narrow this channel through which an expansive view of foreseeability could reenter EPA's practice. An EPA that applies a narrow, proximate-cause standard when it acts, yet presses a broader view of foreseeable effects when it reviews and publicly grades other agencies' work, would undercut the reform this rule accomplishes.

Prime Mover Institute argues respectfully that the effort here is warranted. Section 309 is the channel through which EPA has exercised its most consequential influence over other agencies' projects, and a more durable § 309 standard — one a later administration cannot expand simply by rescinding a memorandum — would restrict a future EPA's authority to develop a regulatory record that makes sister agency actions vulnerable in litigation.

Conclusion

Prime Mover Institute supports EPA's proposed revisions to its NEPA implementing procedures and urges EPA to finalize the § 6.102 scope-of-effects definitions. To make the reform durable, EPA should state in the preamble that an effect must be both reasonably foreseeable and connected to the action by a reasonably close causal relationship, and that § 6.102(b)(6)(ii) codifies the proximate-cause limitation of *Seven County*, *Public Citizen*, and *Metropolitan Edison*; conform the causal text to that limitation, drawing on the formulations the Department of Energy has already adopted; confirm that EPA applies the same standard when it participates as a cooperating agency; and commit to a separate Clean Air Act § 309 rulemaking that codifies the same standard for EPA's review of other agencies' actions. Each recommendation reinforces the rule EPA has proposed. Prime Mover Institute appreciates the opportunity to comment.