

August 4, 2025

Scott Vandegrift, Chief Environmental Review and Permitting Officer  
Office of the Secretary  
U.S. Department of Agriculture  
1400 Independence Ave SW  
Washington, DC 20250

*Submitted electronically to <https://www.regulations.gov>*

**Re: Revision of USDA NEPA Implementing Regulations, Docket No. USDA-2025-0008**

Dear Mr. Vandegrift:

Clean Air Task Force (“CATF”) respectfully submits these comments on the U.S. Department of Agriculture’s (“USDA”) interim final rule modifying its National Environmental Policy Act implementing regulations (Docket No. USDA-2025-0008, 90 Fed. Reg. 29632 (July 3, 2025)).

CATF is a non-profit organization dedicated to advancing the policy and technology changes necessary to achieve a low-emission, high-energy planet at an affordable cost. CATF works to advance a full suite of low-carbon options, including advanced nuclear fission, fusion energy, hydrogen, carbon capture, and superhot rock geothermal. CATF has more than 25 years of internationally recognized expertise on energy policy, science, and law, and a commitment to exploring all potential solutions. CATF has offices in Boston, Washington, D.C., and Brussels, with staff working remotely around the world.

In this comment, CATF strongly urges that USDA reconsider the change from National Environmental Policy Act (“NEPA”) regulations to procedural guidance at the USDA subcomponent level, which will undermine the consistency of environmental reviews and increase uncertainty for project sponsors. We further urge USDA to reconsider the reduction or elimination of notice-and-comment periods, early cooperation with other agencies, and other community engagement and coordination requirements, which are counter to NEPA’s public transparency purposes and likely to foment backlash and create delays. Finally, we urge USDA to incorporate best-in-class scientific analyses, including, as appropriate, cumulative impacts and global impacts, into all NEPA reviews, and to more generally reconsider the shift from mandatory requirements to permissive considerations.

There are numerous evidence-based ways to improve and streamline permitting and environmental reviews while maintaining public participation and rigorous scientific standards. These include efficiencies in the NEPA process, such as transparent and rigorous consideration of regulatory categorical exclusions, tiering of reviews, and eliminating redundancies. Meaningful reform to permitting and environmental review processes must also address the challenges caused by leadership gaps, inconsistent funding, a lack of sufficient staff with permitting expertise in agency headquarters and field offices, and insufficient coordination among federal agencies.

CATF welcomes the opportunity to engage with USDA on these and other necessary reforms.

**I. Binding NEPA regulations encourage efficiency and consistency in environmental reviews, which are undermined by the change to nonbinding procedural guidance at USDA subcomponents.**

Research by CATF has found that transparency, accountability, and consistency are core components of improved federal permitting and environmental reviews, which will in turn speed energy infrastructure deployment.<sup>1</sup> Binding NEPA regulations further these goals through transparency, consistency, and public input. USDA's shift to nonbinding and readily changeable procedural guidance at the subcomponent level, by contrast, will create uncertainty for project sponsors, who will be unsure of requirements and indeed may now have differing requirements across USDA agencies with which they must comply. It also risks inconsistent application of broader, department-level procedures instead of more detailed, agency-specific considerations that are reflective of what each subcomponent is likely to encounter under its statutory authorities. These uncertainties will also be felt by community members, who will have to navigate a wide range of ever-changing requirements and avenues for comment and engagement.

As a result, CATF strongly recommends that USDA restore certainty to the environmental review process by promulgating draft subcomponent-specific regulations in the Federal Register with sufficient time to receive public input through the notice-and-comment period. Such a step would promote clarity for project sponsors and allow for a greater range of stakeholder input. These changes should also be informed by a formal consultation with Tribal governments, who will be impacted by these major changes to USDA's NEPA implementation and have a legal right to government-to-government dialogue.<sup>2</sup>

**II. Public participation in environmental review processes improves outcomes and promotes community support for infrastructure projects.**

Meaningful public participation is critical to ensure both effective and efficient review processes and is a core tenet of NEPA. As the Supreme Court has explained, NEPA has twin aims: (1) to place upon the "agency the obligation to consider every significant aspect of the environmental impact of a proposed action" and (2) to ensure "that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process."<sup>3</sup> Although public participation is essential to achieving those aims, USDA's interim final rule rescinds requirements that ensure transparency, improve project outcomes, and build community support for projects.

**CATF urges USDA to restore requirements for early notice and public scoping, coordination with governments and agencies, and incorporation of public comment.** There are practical ways to expedite environmental review and permitting processes while maintaining

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<sup>1</sup> Clean Air Task Force & Niskanen Center, *Evidence-Based Recommendations for Overcoming Barriers to Federal Transmission Permitting* (Apr. 2024), <https://www.catf.us/wp-content/uploads/2024/04/evidence-based-recommendations-overcoming-barriers-federal-transmission-permitting.pdf>.

<sup>2</sup> See, e.g., Exec. Order No. 13175, 65 Fed. Reg. 67249 (2000); USDA Departmental Regulation 1350-002, Tribal Consultation (Apr. 30, 2024), <https://www.usda.gov/directives/dr-1350-002> (last accessed July 24, 2025).

<sup>3</sup> *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983).

robust scientific analysis and without degrading public participation based on evidence-based recommendations.<sup>4</sup> According to CATF’s analysis, staffing and resource constraints, a lack of coordination across agencies, and poor transparency in process timelines are key areas for improvement, and are all areas where public notice and participation are critically important.

Beyond fulfilling one of NEPA’s intended purposes of increasing public transparency in decisionmaking, public participation processes play a valuable role in mitigating local opposition, delays, and litigation risk. Early public notice, public scoping, and public comment opportunities can proactively address community concerns and have resulted in substantial changes to projects for decades.<sup>5</sup> Proactive engagement with federal, Tribal, state, local, and regional governments can also address potential conflicts earlier and alleviate delays,<sup>6</sup> build community support for energy projects, and ensure mutually beneficial outcomes. Eliminating core avenues for public participation in federal decisions further risks eroding public confidence in decisionmaking. CATF advocates for constructive improvements to existing public participation and permitting processes without eliminating them altogether.

**The requirement for early coordination with affected government entities enhances efficiency and effectiveness and should be restored.** CEQ’s NEPA regulations (both the 2020 and 2024 rules), which CEQ rescinded but advised agencies to consider voluntarily relying on<sup>7</sup> (and which USDA had previously incorporated<sup>8</sup>) emphasized the importance of cooperation early in the NEPA process among any federal, Tribal, state, or local agency with relevant expertise.<sup>9</sup> Such cooperation promotes the sharing of subject matter expertise and enhances the technical soundness of environmental reviews. USDA should therefore add an equivalent requirement into its Departmental NEPA regulations.

**USDA should facilitate robust public input during scoping.** Receiving public input during scoping helps to ensure that the environmental review is scoped appropriately. Without it, reviews may either be overly broad, costing unnecessary time and effort, or overly narrow, creating litigation risk and potential delays. USDA should therefore require public scoping, including scoping meetings and coordination, into its departmental regulations, rather than leaving such considerations at the discretion of the subcomponent responsible official as proposed.<sup>10</sup>

**Publishing draft environmental impact statements (“EIS”) for notice-and-comment strengthens environmental review documents and decreases vulnerability to litigation and delays; this requirement should be restored in departmental regulations.** Newly published research finds that public comments on draft EISs substantially influence federal environment

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<sup>4</sup> CATF & Niskanen, *supra* note 1.

<sup>5</sup> Ashley Stava et al., Quantifying the substantive influence of public comment on United States federal environmental decisions under NEPA, *Environ. Res. Lett.* 20 074028 (2025), [doi.org/10.1088/1748-9326/addee5](https://doi.org/10.1088/1748-9326/addee5).

<sup>6</sup> CATF & Niskanen, *supra* note 1.

<sup>7</sup> See Katherine R. Scarlett, Memorandum for Heads of Federal Departments and Agencies, CEQ at 4 (Feb. 19, 2025), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf>.

<sup>8</sup> 7 C.F.R. pt. 1b (July 2, 2025) (except where noted, references throughout this comment to this part of the Code of Federal Regulations are to the version as of July 2, 2025).

<sup>9</sup> 40 C.F.R. § 1501.2(b)(4)(ii) (June 30, 2024); 40 C.F.R. § 1501.8 (Apr. 10, 2025).

<sup>10</sup> 7 C.F.R. § 1b.7(c).

decisions: public comments resulted in substantive decision alterations in 62 percent of EISs examined, with 64 percent showing modifications to alternatives, 42 percent showing modifications to mitigation plans, and 11 percent leading to the selection of an entirely new preferred alternative.<sup>11</sup> In other words, public comments matter to agency decisionmaking and provide valuable feedback to environmental reviewers that gets incorporated into outcomes. The removal of the requirement to publish draft EISs and receive public comments<sup>12</sup> will therefore weaken the strength of USDA's environmental analyses, which will in turn create litigation risk and project delays. As a result, CATF strongly urges USDA to restore this requirement in its departmental regulations.

### **III. Eliminating or weakening considerations of cumulative impacts, global impacts, and certain community groups will decrease the quality of environmental reviews and may result in missing potential environmental effects.**

The updated definition of "human environment" in these regulations has been altered from covering "present and future generations"<sup>13</sup> to "present and future generations of Americans,"<sup>14</sup> disregarding the international impact of agency action and decreasing the agency's quality of review. USDA should restore its prior definition to ensure the quality of its reviews and address the full scope of review effects.

The removal of various "significance" considerations includes provisions on cumulative impacts, violations of environmental law, effects on endangered species and critical habitat, adverse effects to cultural, scientific, and historical resources, controversial nature of effects on quality of the human environment, unknown risks, and potential for setting precedent for future actions with significant effects.<sup>15</sup>

### **IV. Weakening the safeguards around the establishment and application of categorical exclusions risks leaving communities and the environment exposed to harms.**

The new USDA NEPA regulations also weaken guardrails around application of categorical exclusions. Removing these considerations may lead to less comprehensive environmental reviews that do not address important impacts on humans and the environment. Specifically, USDA's regulation makes consideration of any potential extraordinary circumstances entirely discretionary.<sup>16</sup> That discretion provides no assurance to the public that these safeguards will protect sensitive resources, protected environments, or specific communities from impacts.

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<sup>11</sup> Stava et al., *supra* note 5.

<sup>12</sup> 7 C.F.R. § 1b.7(d)(2)(iv).

<sup>13</sup> 7 C.F.R. § 1b.1(a) (1995) (Prior USDA regulation indicating use of CEQ definition); 40 C.F.R. § 1508.1(r) (2024) (CEQ definition).

<sup>14</sup> 90 Fed. Reg. at 29672 (July 3, 2025) (codified at 7 C.F.R. § 1b.11(a)(21)).

<sup>15</sup> Compare 40 C.F.R. § 1501.3 (Apr. 10, 2025) (prior CEQ definition), with 7 C.F.R. § 1b.11(a)(50) (current USDA provision).

<sup>16</sup> 7 C.F.R. § 1b.3(f) ("Resources for consideration for extraordinary circumstances will be determined at the responsible official's sole discretion and shall be based on the nature of the actions proposed and in the context of the potentially affected environment.").

The revised regulations also eliminate consideration of many specific “extraordinary circumstances,” covering a variety of ecological, social, cumulative, and geographic effects.<sup>17</sup> For example, prior Forest Service guidance mandated consideration of American Indians and Alaska Native religious or cultural sites and archaeological sites, or historic properties or areas, without, as in the new procedures, requiring that those sites are designated or are eligible for listing on the National Register of Historic Places.<sup>18</sup> Prior Natural Resources Conservation Service regulations required evaluation of whether the proposed action significantly affected unique characteristics of ecologically critical areas, if the proposed action’s effects were highly controversial, whether there were potential unique or unknown risks to the human environment, the potential to set precedent for future actions, whether the proposed action would promote or introduce invasive species, and whether it would have an adverse impact on environmental justice communities.<sup>19</sup>

The current regulation omits these categories, and which resources to include in the analysis is left entirely up to the discretion of the responsible official.<sup>20</sup> Further, “an extraordinary circumstance exists only when there is reasonable uncertainty whether the degree of the effect is significant or certainty that the degree of effect is significant.”<sup>21</sup> Not only is the requirement of a “reasonable uncertainty” unclear, but it potentially raises the bar for when the analysis of extraordinary circumstances would actually preclude application of a categorical exclusion. USDA should restore its prior “significance” and “extraordinary circumstances” considerations to ensure comprehensive environmental reviews.<sup>22</sup>

This weakening of the extraordinary circumstances guardrails is compounded by the rule’s diminished public transparency requirements. Under USDA’s NEPA procedures, future categorical exclusions will be established or revised without notice and comment procedures. Although the procedures require USDA to post a notice in the Federal Register announcing categorical exclusion establishments or revisions, this provision imposes no obligation to solicit or review public comments and the categorical exclusion goes into effect immediately upon publication of the notice.<sup>23</sup> The public thus loses the ability to meaningfully participate in defining the scope of categorical exclusions, further amplifying the importance of the now-removed automatic safeguards for extraordinary circumstances. By curtailing public participation, USDA produces a thinner administrative record that hinders meaningful judicial review of categorical exclusion determinations at the time they are established. USDA should restore both sets of protections to ensure that categorical exclusions are responsibly developed and only applied to actions with minimal adverse effects.

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<sup>17</sup> Compare 40 C.F.R. § 1508.1(o) (Apr. 10, 2025) (prior CEQ definition), with 7 C.F.R. § 1b.3(f) (current USDA regulation).

<sup>18</sup> 36 C.F.R. § 220.6(b) (July 24, 2008) (repealed July 3, 2025).

<sup>19</sup> 7 C.F.R. § 650.6(c) (Sept. 24, 1979) (repealed July 3, 2025).

<sup>20</sup> 7 C.F.R. § 1b.3(f) (“Resources for consideration for extraordinary circumstances will be determined at the responsible official’s sole discretion”).

<sup>21</sup> 7 C.F.R. § 1b.3(f)(2).

<sup>22</sup> *Id.*

<sup>23</sup> 7 C.F.R. § 1b.3(b)(3).

**V. The shifting of mandatory requirements to permissive considerations will lead to uncertainty.**

Mandatory requirements provide predictability to the NEPA review process, ensuring the public has well-defined timelines and opportunities for comment and that agency decisionmakers receive the necessary analysis to make informed decisions. USDA's updated regulations disregard this predictability in favor of permissive considerations, which will lead to significant uncertainty in public participation and undermine the quality of environmental reviews. While it is important that USDA has the flexibility to adapt to unique circumstances, that flexibility should be exercised within the confines of predictable, binding procedural requirements and clearly defined, limited circumstances. The public needs to be able to understand if and when it will be able to communicate with the agency about the consequences of each of the agency's actions and have confidence that agency decisionmakers receive and consider sufficiently detailed environmental reviews. Case-by-case deviations undermine the crucial role that predictability plays in enabling meaningful public engagement and informed decisionmaking.

For example, CEQ's previous regulations required USDA to use scoping "to determine the scope of issues for analysis in an environmental impact statement... as soon as practicable" and to conduct early outreach to relevant individuals and agencies as part of the scoping process.<sup>24</sup> USDA's updated regulations, meanwhile, note that "there is no prescribed process or procedure required for scoping"; USDA subcomponents "*may* use an early and open process to determine the scope of issues and alternatives for analysis," which "*may* begin as soon as practicable" and "*may* include appropriate pre-application procedures or work conducted prior to publication of the notice of intent."<sup>25</sup> The public will therefore face greater uncertainty over whether they may have an opportunity to comment on the proposed scope of the environmental review. To maintain meaningful public participation and consistency in NEPA reviews, USDA should restore mandatory language that ensures uniform decisionmaking. USDA's updated regulations inject unnecessary ambiguity and should be rescinded.

**Conclusion**

CATF respectfully provides these comments to emphasize the value that codified and binding regulations provide for transparency, accountability, consistency, and public participation. Considering the importance of each of these attributes, USDA should reconsider and rescind the interim final rule. Failing that, USDA should greatly increase requirements for receiving and acting upon public and Tribal input, interagency coordination, use of rigorous scientific analyses, categorical exclusion development, and consideration of impacts. CATF will continue to advance evidence-based policies that reduce the time for review of beneficial projects, enhance the quality of environmental reviews, facilitate public participation, and provide agencies with information necessary to make informed decisions.

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<sup>24</sup> 40 C.F.R. § 1502.4 (Apr. 10, 2025).

<sup>25</sup> 7 C.F.R. § 1b.7(c) (emphasis added).

Respectfully submitted,

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