

August 4, 2025

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Office of Environmental Policy and Compliance
U.S. Department of the Interior
1849 C Street NW, MS 5020
Washington, DC 20240

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

Re: Revision of DOI NEPA Implementing Regulations, DOI-2025-0004

Dear Mr. Tryon:

Clean Air Task Force (“CATF”) respectfully submits these comments on the U.S. Department of the Interior’s (“DOI”) revision of National Environmental Policy Act Implementing Procedures, (Docket No. DOI-2025-0004, 90 Fed. Reg. 29498 (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 DOI reconsider the change from National Environmental Policy Act (“NEPA”) regulations to procedural guidance, which will undermine the consistency of environmental reviews and increase uncertainty for project sponsors. We further urge DOI to reconsider the reduction or elimination of notice-and-comment periods, public scoping requirements, 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 DOI to incorporate best-in-class scientific analyses, including, as appropriate, cumulative impacts and global impacts, into all NEPA reviews; to more generally reconsider the shift from mandatory requirements to permissive considerations; and to strengthen the safeguards around categorical exclusion establishment and application.

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 DOI 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.

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.¹ Binding NEPA regulations further these goals through transparency, consistency, and public input. DOI's shift to nonbinding and readily changeable procedural guidance, by contrast, will create uncertainty for project sponsors, who will be unsure of requirements and indeed may now have differing requirements across agencies with which they must comply. This uncertainty 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 DOI restore certainty to the environmental review process by rescinding this interim final rule and instead promulgating draft regulations in the Federal Register. 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 DOI's NEPA implementation and have a legal right to government-to-government dialogue.²

II. Public participation in environmental review processes improves outcomes and promotes community support for energy 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."³ Although public participation is essential to achieving those aims, DOI's interim final rule rescinds requirements that ensure transparency, improve project outcomes, and build community support for projects.

CATF urges DOI to restore requirements for 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 robust scientific analysis and without degrading public participation based on evidence-based recommendations.⁴ According to CATF's analysis, staffing and resource constraints, a lack of coordination across

¹ 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>.

² Exec. Order No. 13175, 65 Fed. Reg. 67249 (2000); DOI 512 Departmental Manual 5, *Procedures for Consultation with Indian Tribes* (2022), https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-5_2.pdf.

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

⁴ CATF & Niskanen, *supra* note 1.

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.⁵ Proactive engagement with federal, Tribal, state, local, and regional governments can also address potential conflicts earlier and alleviate delays,⁶ 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 decision-making. 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,⁷ emphasized the importance of cooperation early in the NEPA process among any federal, Tribal, state, or local agency with relevant expertise.⁸ Similarly, DOI's prior NEPA regulations required bureaus to "coordinate, as early as feasible, with: (1) [a]ny other bureaus or Federal agencies, State, local, and tribal governments having jurisdiction by law or special expertise; and (2) [a]ppropriate Federal, State, local, and tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources or other aspects of the human environment."⁹ Such cooperation promotes the sharing of subject matter expertise and enhances the technical soundness of environmental reviews. DOI should therefore restore an equivalent requirement into its NEPA implementing procedures.

DOI 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. DOI should therefore require public scoping, including scoping meetings and coordination into its NEPA implementing procedures, rather than leaving the process vague, as currently written.¹⁰

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. Newly published research finds that public

⁵ 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.

⁶ CATF & Niskanen, *supra* note 1.

⁷ 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>.

⁸ 40 C.F.R. § 1501.2(b)(4)(ii) (June 30, 2024); 40 C.F.R. § 1501.8 (Apr. 10, 2025).

⁹ 43 C.F.R. § 46.200 (July 2, 2025).

¹⁰ DOI 516 Departmental Manual 1, *U.S. Department of the Interior Handbook of National Environmental Policy Act Implementing Procedures* ("Handbook") (2025), 1.8(c), <https://www.doi.gov/media/document/doi-nepa-handbook>.

comments on draft EISs substantially influence federal environment 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.¹¹ In other words, public comments matter to agency decisionmaking and provide valuable feedback to environmental reviewers that gets incorporated into outcomes. The removal of this requirement will therefore weaken the strength of DOI's environmental analyses, which will in turn create litigation risk and project delays. As a result, CATF strongly urges DOI to restore this requirement.

III. 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. DOI's updated guidance disregards 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 DOI 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, the previous regulations required DOI to request comments from the public and relevant government entities on draft EISs.¹² The new guidance abandons this predictability, instead providing that DOI "[m]ay request the comments of the public."¹³ The public will therefore face greater uncertainty over whether they may have an opportunity to comment on the prudence of a proposed project. To maintain meaningful public participation and consistency in NEPA reviews, DOI should restore mandatory language that ensures uniform decisionmaking. DOI's guidance injects unnecessary ambiguity and should be rescinded.

IV. 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 revised definition of "human environment" in these regulations has been altered from including "the natural and physical environment and the relationship of *people* with that environment"¹⁴ to "the natural and physical environment and the relationship of *Americans* with that environment,"¹⁵ disregarding the international impact of agency action and decreasing the

¹¹ Stava et al., *supra* note 5.

¹² 40 CFR § 1503.1(a) (Apr. 10, 2025).

¹³ Handbook § 2.1(b)(ii) (emphasis added).

¹⁴ See 40 C.F.R. § 1508.14.

¹⁵ See Handbook § 6.1(k).

agency's quality of review. DOI should restore its prior definition to ensure the quality of its reviews and address the full scope of review effects.

DOI's removal of extraordinary circumstances considerations including controversial effects or conflicts, violations of environmental law, and environmental justice¹⁶ weakens its quality of review as vital factors may not be considered. DOI has also weakened its review of cumulative effects and invasive species to require significant effects from individual actions,¹⁷ which ignores the potentially much more significant effects from groups. DOI should restore its prior considerations for extraordinary circumstances to ensure all relevant factors are addressed and to ensure reviews are comprehensive.

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

Categorical exclusions are an important tool for facilitating development of projects that do not have a significant effect on the environment and should be created and used where appropriate. Categorical exclusions can fast track the types of projects or stages in project development and deployment that do not have significant adverse effects—and that often have major environmental benefits. They can also provide an incentive for project proponents to minimize adverse impacts in order to qualify for categorical exclusions.

However, it is essential that categorical exclusions are established with care, sufficient public transparency and documentation, and only when there is a well-documented history of findings of no significant impacts (“FONSI”) in prior relevant environmental reviews. In other words, categorical exclusions are not a way to bypass rigorous scrutiny or circumvent the NEPA process, but a carefully developed and applied level of NEPA review for projects with a documented history of FONSI. DOI's new implementing procedures call into question whether this care will be taken. Specifically, the requirement that bureaus examine whether “the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion” for environmental reviews that do not fall under an existing categorical exclusion, coupled with the removal of a public comment process for establishing new categorical exclusions, raise concerns that DOI will weaken the safeguards around the categorical exclusion definition.¹⁸

Furthermore, weakening of safeguards is not congruent with NEPA's requirements. Categorical exclusions are intended to expedite NEPA reviews for actions known to not have significant impacts. Their use must be consistent with NEPA's purposes “to promote efforts which will prevent or eliminate damage to the environment and biosphere” and to integrate “environmental concerns ... into the very process of agency decision-making.”¹⁹

As the courts have explained, the application “of a categorical exclusion is not an exemption from NEPA; rather, it is a form of NEPA compliance, albeit one that requires less than where an

¹⁶ Compare 43 C.F.R. § 46.215 (2008), with 43 C.F.R. §46.215 (July 21, 2025).

¹⁷ *Id.*

¹⁸ Handbook § 1.2(3); 43 C.F.R. § 46.205(h).

¹⁹ *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979).

environmental impact statement or an environmental assessment is necessary.”²⁰ To ensure that categorical exclusions satisfy this standard, it is important that agencies use transparent processes and provide adequate support for the identified categories. DOI’s proposed changes do not meet this standard and should be withdrawn.

DOI is eliminating important safeguards that prevent the use of categorical exclusions where a proposal raises environmental justice concerns. This consideration has been removed from the definition of “extraordinary circumstances” that DOI is using.²¹ The result is that now DOI may invoke a categorical exclusion even when the proposed action may have a “disproportionately high and adverse effect on low income or minority populations,” which erodes an important safeguard for the application of categorical exclusions.²²

This weakening of the extraordinary circumstances guardrails is compounded by the rule’s diminished public transparency requirements. Under the DOI NEPA procedures, future categorical exclusions will be established or revised without notice and comment procedures. Although this provision requires DOI to post a notice in the Federal Register announcing categorical exclusion establishments or revisions, it imposes no obligation to solicit or review public comments.²³ 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, DOI produces a thinner administrative record that hinders meaningful judicial review of categorical exclusion determinations at the time they are established. DOI should restore both sets of protections to ensure that categorical exclusions are responsibly developed and only applied to actions with minimal adverse effects.

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, DOI should reconsider and rescind the interim final rule. Failing that, DOI should greatly increase requirements for receiving and acting upon public and Tribal input, interagency coordination, use of rigorous scientific analyses, consideration of impacts, and developing and applying categorical exclusions. 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.

²⁰ *Ctr. for Biological Diversity v. Salazar*, 706 F.3d 1085, 1096 (9th Cir. 2013).

²¹ *Compare* 43 C.F.R. § 46.215 (2008), *with* 43 C.F.R. § 46.215 (July 21, 2025).

²² *Id.*

²³ 43 C.F.R. § 46.205(h)(3).

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