

August 4, 2025

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U.S. Department of Energy
1000 Independence Ave SW
Washington, DC 20585

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

Re: Revision of DOE NEPA Implementing Regulations, RIN 1990-AA52, DOE-HQ-2025-0026

Dear Ms. Abravanel:

Clean Air Task Force (“CATF”) respectfully submits these comments on the U.S. Department of Energy’s (“DOE”) Revision of National Environmental Policy Act Implementing Procedures (Docket No. DOE-HQ-2025-0026, 90 Fed. Reg. 29676 (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 DOE 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 DOE 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. We also ask DOE not to finalize provisions in the guidance that would unlawfully curtail the application of NEPA to certain actions, specifically orders under section 202(c) of the Federal Power Act and presidential permits, to which the statute clearly applies. Finally, we urge DOE 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 DOE 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. DOE'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 DOE 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 DOE'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, DOE's interim final rule rescinds requirements that ensure transparency, improves project outcomes, and builds community support for projects.

CATF urges DOE 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 robust

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 See, e.g., Exec. Order No. 13175, 65 Fed. Reg. 67249 (2000); Department of Energy Order 144.1—*Department of Energy American Indian Tribal Government Interactions and Policy* (2009), <https://www.energy.gov/sites/prod/files/DOE%20O%20144.1.pdf>.

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

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 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 decision-making, 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 applicants to substantively consult with federal, Tribal, state, local, and regional governments to identify environmental factors and permitting requirements promotes upfront clarity and knowledge on the proper scope of reviews and should be restored. DOE’s longstanding regulations required applicants to “consult with appropriate Federal, state, regional and local agencies, American Indian tribes and other potentially interested parties during the preliminary planning stages of the proposed action to identify environmental factors and permitting requirements.”⁷ This requirement, which is removed in the interim final rule, is an important component of the early environmental review process, ensuring that applicants have the necessary information upfront to successfully navigate the requirements and perspectives they will later encounter. This provision should therefore be restored.

The requirement for early coordination with affected government entities enhances efficiency and effectiveness and should be restored. CEQ’s NEPA regulations, which CEQ rescinded but advised agencies to consider voluntarily relying on,⁸ emphasized the importance of cooperation early in the NEPA process among any Federal, Tribal, state, or local agency with relevant expertise.⁹ Such cooperation promotes the sharing of subject matter expertise and enhances the technical soundness of environmental reviews. DOE should therefore add an equivalent requirement into its agency-specific NEPA procedures.

⁴ CATF & Niskanen, *supra* note 1.

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 10 C.F.R. § 1021.215(b)(3) (cites to 10 C.F.R. pt. 1021 and its subsections in this comment are to the versions that existed prior to the interim final rule’s effective date of July 3, 2025).

⁸ 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>.

⁹ 40 C.F.R. § 1501.8 (Apr. 10, 2025)

The requirement for DOE to hold public scoping meetings and to consider all public comments received during the notice-and-comment period for the Notice of Intent (“NOI”) ensures proper scoping, saves time and expense, and should be restored. DOE’s longstanding regulations required “at least one public scoping meeting” and mandated that, “[i]n determining the scope of the EIS, DOE shall consider all comments received during the announced comment period.”¹⁰ Receiving this public input through multiple avenues 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. DOE should therefore not eliminate these public scoping requirements.

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 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 DOE’s environmental analyses, which will in turn create litigation risk and project delays. As a result, CATF strongly urges DOE to restore this requirement.

The requirement to publish records of decision (“RODs”) in the Federal Register promotes transparency and accessibility and should be restored. The Federal Register has served as a reliable and central location for filing documents for public inspection for nearly a hundred years. DOE’s prior regulations, which noted that “DOE RODs shall be published in the Federal Register and made available to the public,” furthered these goals of transparency and accessibility for any stakeholder interested in agency decisionmaking.¹² Removing this requirement may lead to a patchwork of websites and links hosting environmental review documents, rendering them unnecessarily difficult for stakeholders to access.¹³ DOE should therefore restore the requirement to publish RODs in the Federal Register.

III. DOE must rescind guidance provisions that unlawfully describe NEPA as not applying to presidential permits or Federal Power Act section 202(c) orders issued by DOE.

The DOE NEPA Implementing Procedures incorrectly and unlawfully state that NEPA does not apply to presidential permits or Federal Power Act section 202(c) orders issued by DOE.¹⁴ DOE

¹⁰ *Id.* § 1021.311(d), (e).

¹¹ Stava et al., *supra* note 4.

¹² 10 C.F.R. § 1021.315(c)

¹³ This practice also increases the risk of “link rot,” the increasing unavailability of online content over time. One study of link rot found that a full 38 percent of webpages that existed in 2013 were no longer accessible just a decade later. See Athena Chapekis et al., When Online Content Disappears, *Pew Research Center* (2024), <https://www.pewresearch.org/data-labs/2024/05/17/when-online-content-disappears>.

¹⁴ See Guidance § 2.1(c)(3) & (6).

must rescind these unlawful provisions and instead provide guidance on how DOE intends to comply with its NEPA obligations for these types of actions.

First, contrary to the guidance’s unsupported assertions, NEPA applies to DOE-issued presidential permits, and the guidance must be revised to reflect that. DOE’s assertion that it “is settled and established law ... that Presidential actions are not subject to NEPA review” is flatly incorrect, and DOE provides no evidence in support of this claim.¹⁵ To the contrary, multiple courts have held that NEPA does indeed apply to agency-issued permits based on delegated presidential permitting authority.¹⁶

Where DOE evaluates the environmental effects of an action and issues a permit, NEPA clearly applies. The provision in the guidance indicates that it applies to “DOE’s issuance” of a permit—not a presidential action.¹⁷ As DOE has previously explained, the agency “[i]ncorporates results of the NEPA analysis” when processing applications for this type of permit.¹⁸ An agency cannot “shield itself from judicial review under the [Administrative Procedure Act] for any action ‘by arguing that it was “Presidential,” no matter how far removed from the decision the President actually was.’”¹⁹ That is the case here, where DOE—not the President—evaluates an application and issues a permit, and as a result NEPA clearly applies. Furthermore, because DOE relies on an inaccurate description of the case law, the agency has not provided a reasoned explanation for this policy change, further rendering the change arbitrary and capricious and otherwise unlawful.²⁰

Second, NEPA applies to orders issued under section 202(c) of the Federal Power Act,²¹ and the guidance provision stating otherwise must be rescinded. The text of Federal Power Act section 202(c) explicitly requires consideration of environmental impacts, including requiring DOE to “ensure” that action taken to comply with orders issued under the section “to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts.”²² For renewals of an order under this provision, which may occur after an initial order’s 90-day period expires, the statutory text requires that DOE “shall consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation, and shall include in

¹⁵ *Contra* 90 Fed. Reg. at 29677.

¹⁶ *See, e.g., Indigenous Env't. Network v. U.S. Dep't of State*, No. 17-cv-29, 2017 U.S. Dist. LEXIS 193546, at *15 (D. Mont. Nov. 20, 2017)); *Protect Our Cmty's. Found. v. Chu*, No. 12-cv-306, 2014 U.S. Dist. LEXIS 42410, at *16 (S.D. Cal. Mar. 27, 2024) (holding “it is clear that this Court has been tasked to review agency actions such as the issuance of a Presidential permit by an agency”); *Sierra Club v. Clinton*, 689 F. Supp. 2d 1147, 1157 (D. Minn. 2010) (holding that a State Department NEPA review of a pipeline with a border crossing was reviewable); *see also Sierra Club v. U.S. Army Corps of Eng'rs*, No. 20-cv-396, 2025 U.S. Dist. LEXIS 59768, at *55-61 (Mar. 31, 2025) (reviewing case law and declining to rule on whether the Administrative Procedure Act applied to a DOE-issued NEPA analysis in conjunction with a presidential permit).

¹⁷ Guidance § 2.1(c)(3).

¹⁸ *See* DOE, *Presidential Permits – Procedures*, <https://www.energy.gov/gdo/presidential-permits-procedures> (last accessed July 14, 2025).

¹⁹ *Indigenous Env't. Network*, 2017 U.S. Dist. LEXIS 193546, at *14 (quoting *Protect Our Cmty's.*, 2014 U.S. Dist. LEXIS 42410, at *17-18).

²⁰ *See F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009).

²¹ 16 U.S.C. § 842a(c).

²² *Id.* § 824a(c)(2).

any such renewed or reissued order such conditions as such Federal agency determines necessary to minimize any adverse environmental impacts to the extent practicable.”²³ These provisions clearly mandate that DOE must consider environmental impacts when issuing or renewing orders under section 202(c) of the Federal Power Act. There is a perfect harmony between the Federal Power Act’s statutory commands to ensure environmental impacts are minimized and DOE’s obligations under NEPA. The guidance’s contrary assertion that there are conflicts between NEPA and Federal Power Act section 202(c) is thus flatly contrary by the text of the provision.

Furthermore, NEPA does not exempt emergency actions. When interpreting statutory provisions, courts “assume that Congress is aware of existing law when it passes legislation.”²⁴ Federal Power Act section 202(c) was enacted in 1935 and was amended specifically to include greater consideration of environmental effects in 2015.²⁵ Congress was aware of the Federal Power Act when it enacted NEPA in 1970 and, specific to the 2015 Federal Power Act amendments, when Congress amended NEPA to add, among other provisions, a definition of “major Federal action” in 2023.²⁶ In neither instance did Congress exclude emergency actions from compliance with NEPA. Congress could have placed emergencies, whether in general or specific to the Federal Power Act, outside the scope of NEPA, but it did not do so. DOE cannot now make that legislative change on its own.

Indeed, DOE is clearly aware of its requirement to comply with NEPA in emergency circumstances, as evinced by its retention of a regulation governing that circumstance in the interim final rule.²⁷ An agency’s “actions must also be consistent; an internally inconsistent analysis is arbitrary and capricious.”²⁸ Here, DOE provides contradictory statements about compliance in emergency circumstances.

Complying with NEPA for section 202(c) orders by using emergency procedures is also feasible, as DOE has previously done so in two special environmental assessments and one draft environmental assessment.²⁹ That past compliance shows that DOE is unlawfully departing from its existing policy of preparing NEPA reviews for orders under section 202(c) without providing a reasoned explanation or even an awareness that it is changing position, further making this change arbitrary and capricious and otherwise unlawful.³⁰

In summary, Congress explicitly required consideration of environmental impacts under Federal Power Act section 202(c); Congress did not exclude these orders or other emergency actions

²³ *Id.* § 824a(c)(4)(B).

²⁴ *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990).

²⁵ See Public Utility Act of 1935, tit. II, § 213, 49 Stat. 803, 848; Fixing America’s Surface Transportation Act, Pub. L. 114-94, Div F, § 61002, 129 Stat. 1312, 1772 (2015).

²⁶ See Pub. L. 91-190 (1970); Fiscal Responsibility Act of 2023, tit. III, § 321(b), 137 Stat. 9, 45 (adding definition).

²⁷ See 90 Fed. Reg. at 29677 (“DOE is retaining a provision for action in emergency situations to ensure that DOE 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.”); see also *id.* at 29,683 (text of 10 C.F.R. § 1021.103 covering “Emergency actions”)

²⁸ *Nat’l Parks Conservation Ass’n v. U.S. EPA*, 788 F.3d 1134, 1141 (9th Cir. 2015) (citing *Gen. Chem. Corp. v. United States*, 817 F.2d 844, 857 (D.C. Cir. 1987) (per curiam)).

²⁹ See Benjamin Rolsma, *The New Reliability Override*, 57 Conn. L. Rev. 789, 825 & n.256 (2025) (describing and linking to previous environmental reviews).

³⁰ See *Fox TV*, 556 U.S. at 515-16.

from NEPA's application when passing or amending NEPA, despite awareness of Federal Power Act section 202(c); and DOE unlawfully departs from its prior policy without a reasoned explanation or even displaying awareness it is changing position. This provision gets the law wrong, fails to comply with administrative procedure, and must be rescinded.

IV. The shifting of mandatory requirements to permissive considerations, including even case-by-case discretion for agency procedures in their entirety, 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. DOE'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. The updated guidance reflects this imprudent shift in its entirety, stating that "DOE retains the discretion to adopt approaches on a case-by-case basis that differ from those described in these procedures where appropriate."³¹ While it is important that DOE 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 DOE to prepare a supplemental EIS when there were "substantial changes to the proposal."³² Furthermore, if it was unclear whether a supplemental EIS was required, the regulations provided that DOE "*shall* prepare a Supplement Analysis."³³ The guidance abandons this predictability, instead providing that "When it is unclear whether or not a supplement to an environmental document is required, DOE *may* prepare a supplement analysis."³⁴ The public will therefore face greater uncertainty over whether they may have an opportunity to comment on changed circumstances potentially affecting the prudence of a proposed project. To maintain meaningful public participation and consistency in NEPA reviews, DOE should restore mandatory language that ensures uniform decisionmaking. DOE's guidance injects unnecessary ambiguity and should be rescinded.

³¹ Guidance § 1.0.

³² 10 C.F.R. § 1021.314(a).

³³ 10 C.F.R. § 1021.314(c) (emphasis added).

³⁴ Guidance § 3.9(b) (emphasis added).

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

The new definition of “human environment” in DOE’s guidance has been altered from covering “present and future generations”³⁵ to “present and future generations of Americans,”³⁶ disregarding the international impact of agency action and decreasing the agency’s quality of review. DOE should restore its prior definitions to ensure the quality of its reviews and address the full scope of review effects.

DOE’s new guidance replaces the definition of “effects or impacts” to remove considerations of cumulative effects, as well as ecological, historical, cultural, aesthetic, economic, social, or health effects, including disproportionate adverse effects on environmental justice communities.³⁷ The new definition also removes considerations of tribal resources, climate change, and environmental justice, further reducing the scope and quality of environmental review.³⁸ This may result in missing potential environmental impacts affecting many communities and Tribal nations. DOE should restore its prior “effects or impacts” definition to ensure all communities are appropriately considered during the review process.

VI. 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 they 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. DOE’s guidance provisions to “consider whether to establish a new categorical exclusion, or revise an existing categorical exclusion” for *all* environmental reviews that do not fall under an existing categorical exclusion, coupled with the provision that “DOE will look for opportunities to forego a 30-day consultation process” for establishing new categorical exclusions, raise concerns that DOE will weaken the safeguards around categorical exclusion definition.³⁹

³⁵ 10 C.F.R. § 1021.104(a) (Prior DOE regulation indicating use of CEQ definition); 40 C.F.R. § 1508.1(r) (2024) (CEQ definition).

³⁶ Guidance at § 8.0.

³⁷ See 10 C.F.R. § 1021.104(a) (Prior DOE regulation indicating use of CEQ definition); 40 C.F.R. § 1508.1(i) (2024) (CEQ definition); *compare with* 90 Fed. Reg. 29676, 29703 (July 3, 2025).

³⁸ *Id.*

³⁹ Guidance § 2.2(b)(2), 5.1(c).

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."⁴⁰

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 environmental impact statement or an environmental assessment is necessary."⁴¹ To ensure that categorical exclusions satisfy this standard, it is important that agencies use transparent processes and provide adequate support for the identified categories. DOE's proposed changes do not meet this standard and should be withdrawn. The interim final rule converts the extraordinary circumstances review from a mandatory evaluation of listed circumstances to a discretionary determination driven by DOE's judgement of whether a circumstance is "likely to cause" a significant effect.⁴² The revised procedures state that the presence of an extraordinary circumstance does not preclude the application of a categorical exclusion unless DOE concludes that the extraordinary circumstance will have a foreseeably significant effect.⁴³

In addition to turning what is currently a mandatory duty to respect extraordinary circumstances into a discretionary determination, DOE is eliminating important safeguards that prevent the use of categorical exclusions where a proposal impacted environmental justice concerns, climate-related effects, or impacts to historic properties and other cultural resources. These considerations have been removed from the definition of "extraordinary circumstances" that DOE is using.⁴⁴ Environmental justice and climate-related effects are no longer considered at all by DOE's new framework, and impacts to historic properties and other cultural resources are now only considered when DOE is establishing a categorical exclusion, not when considering extraordinary circumstances.⁴⁵ The result is that now DOE may invoke a categorical exclusion even when these potential sensitive impacts are present, so long as the agency asserts that the significant effects are unlikely. This erodes the important safeguards for the application of categorical exclusions.

This weakening of the extraordinary circumstances guardrails is compounded by the rule's diminished public transparency requirements. Under the DOE NEPA guidance, future categorical exclusions will be established or revised without notice and comment procedures. Although section 5.1 of the guidance requires DOE to post a notice in the Federal Register announcing categorical exclusion establishments or revisions, it imposes no obligation to solicit or review public comments, and the categorical exclusion goes into effect immediately upon publication of the notice. 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, DOE

⁴⁰ *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979).

⁴¹ *Ctr. for Biological Diversity v. Salazar*, 706 F.3d 1085, 1096 (9th Cir. 2013).

⁴² See Guidance § 5.4(c)(3).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Guidance § Appendix B.

produces a thinner administrative record that hinders meaningful judicial review of categorical exclusion determinations at the time they are established. DOE 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, DOE should reconsider and rescind the interim final rule. Failing that, DOE 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. DOE must also rescind those guidance provisions that unlawfully describe NEPA as not applying to presidential permits or Federal Power Act section 202(c) orders issued by DOE. 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.

Respectfully submitted,

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