



July 30, 2025

U.S. Department of Agriculture
Office of Energy and Environmental Policy
1400 Independence Ave. SW
Washington, DC 20250

Re: Comments on USDA Interim Final Rule - National Environmental Policy Act
Docket Number: [USDA-2025-0008] | RIN 0503-AA86

Dear Secretary Brooke Rollins and NEPA Rulemaking Team,

The Alliance for Tribal Clean Energy respectfully submits this comment in strong opposition to the U.S. Department of Agriculture's (USDA) July 3, 2025, interim final rule rescinding all agency-specific regulations implementing the National Environmental Policy Act (NEPA).¹ These changes have profound implications for Tribal Nations, and the process by which they were enacted disregards the federal trust responsibility and Tribal sovereignty. These comments respond specifically to USDA's request for input on the rationale for the rule, retention and expansion of categorical exclusions, emergency procedures, and broader regulatory updates.

I. Rescission of USDA's Agency-Specific NEPA Rules Harms Tribal Interests

The USDA's removal of seven agency-specific NEPA regulations covering the Forest Service, Farm Service Agency, Rural Utilities Service, and others, strips away tailored procedures that once provided structured opportunities for tribal consultation and input.² These rules previously ensured early engagement with Tribal Nations during environmental reviews and supported consideration of traditional ecological knowledge, sacred site protections, and treaty-reserved rights. By eliminating those mechanisms and replacing them with a uniform set of department-wide procedures, the USDA has created a one-size-fits-all framework that ignores the diversity of tribal communities and the distinct contexts in which USDA programs operate. This change jeopardizes the ability of tribes to engage meaningfully in projects affecting forest lands, grazing areas, food systems, broadband infrastructure, and energy development in or near tribal territories.

In aligning with the Fiscal Responsibility Act of 2023³ and Executive Order 14154,⁴ USDA should recognize that early and meaningful Tribal engagement is not a delay but a prerequisite for meeting NEPA's statutory deadlines while avoiding later conflicts and litigation. The Department should codify, not just reference, the federal trust responsibility and government-to-government relationship with Tribal

¹ USDA NEPA Rule, 89 *Fed. Reg.* 51326 (July 3, 2025).

² *Ibid.*, USDA, NEPA Implementing Procedures Rule (7 CFR § 1b).

³ Public Law 118-5, *Fiscal Responsibility Act of 2023*, (3 June 2023).

⁴ Executive Order 14154, *Unleashing American Energy*, 90 *Fed. Reg.* 19 (January 29, 2025).

Nations as required by Executive Order 13175⁵ and USDA's statutory mandate to maintain dedicated Tribal relations.⁶

To meet these obligations:

- USDA NEPA procedures should require early pre-NEPA cultural mapping with affected Tribal Nations to identify sacred sites, burial grounds, and cultural landscapes before alternatives are finalized or categorical exclusions are applied.⁷
- Procedural text must guarantee sufficient time and resources for Tribal participation to avoid violating the trust responsibility under NHPA⁸ and NAGPRA.⁹

II. Removal of Tribal Consultation Requirements Is a Serious Breach

Under the prior regulations, USDA agencies were required to consult with tribes during the NEPA process. The current rule removes this obligation entirely. USDA's assertion that these rule changes "do not have tribal implications"¹⁰ and therefore do not trigger Executive Order 13175 consultation requirements is a serious abdication of the federal trust obligation. NEPA is often the only mechanism through which Tribes are made aware of, and able to influence, federal projects that may harm culturally significant landscapes, burial grounds, water systems, or traditional ecological resources. Stripping away those protections while asserting no tribal impact is a dangerous precedent and a violation of the government-to-government relationship.

III. Categorical Exclusions: Retention and Safeguards

The new rule implements limits imposed by the Fiscal Responsibility Act of 2023¹¹, including page and time caps on Environmental Impact Statements and Environmental Assessments, a narrower definition of "major federal action," and expanded use of categorical exclusions. These changes disproportionately affect Tribes, who may lack the legal and technical staff needed to respond quickly to complex proposals under shortened timelines. Moreover, categorical exclusions risk authorizing activities with significant cumulative or indirect impacts on Tribal lands without any environmental review or notice to affected communities.

USDA's expansion of categorical exclusions (CEs), combined with the FRA's narrowed "major Federal action" definition (42 U.S.C. § 4336e), risks authorizing activities with significant impacts on Tribal cultural landscapes without environmental review or notice.

⁵ *Executive Order* No. 13175, "Consultation and Coordination with Indian Tribal Governments," 65 *Fed. Reg.* 67249 (Nov. 9, 2000).

⁶ 7 U.S.C. § 2204b.

⁷ 36 CFR § 800.1(c)

⁸ 54 U.S.C. § 300101

⁹ 25 U.S.C. § 3002

¹⁰ USDA Prepublication Rule PDF, p. 19,

<https://www.usda.gov/sites/default/files/documents/nepa-implementing-procedures-usda-7-cfr-1b-20250627-prepublication.pdf>

¹¹Public Law 118-5

To ensure CE use is consistent with law and Tribal sovereignty, USDA must prohibit the use of CEs for actions with potential impacts on sacred sites, ancestral landscapes, or treaty-protected resources, including those off-reservation and on private lands where federal actions trigger NEPA obligations (36 CFR § 800.16(y)). Any application of a CE in culturally sensitive areas must require formal Tribal approval. USDA should establish Tribal-specific CEs to expedite Tribal-led renewable energy, agriculture, broadband, or cultural preservation projects on Tribal lands, recognizing the inherent sovereign right of each Tribe to determine the use and protection of its lands and resources. CEs must not be applied until a pre-NEPA Tribal cultural survey confirms no impacts to cultural resources, and extraordinary circumstances review must be conducted under the Council of Environmental Quality's NEPA regulations.¹² In applying any CE, USDA must also ensure compliance with the "major Federal action" threshold.¹³

IV. Emergency Procedures: Protecting Sacred Sites and Section 106/NAGPRA Compliance

We recognize USDA's need for emergency procedures to address urgent agricultural, forestry, or energy concerns. However, emergency NEPA provisions must not waive or compress Tribal consultation or cultural protection requirements. USDA must ensure that all emergency actions triggering NEPA include immediate Tribal notification and consultation, that cultural resource surveys and sacred site protections are not suspended under emergency determinations, that Section 106 emergency procedures¹⁴ and NAGPRA inadvertent discovery provisions¹⁵ are explicitly preserved, and that post-emergency reviews include full Tribal input and mitigation for any cultural impacts.

V. USDA Bypassed Tribal Engagement and Public Accountability

Perhaps most concerning is USDA's decision to implement the rule without prior public comment or tribal consultation, invoking a "good cause" waiver under the Administrative Procedure Act.¹⁶ The Department characterized the rule as procedural and dismissed the likelihood of substantial impacts on tribes, despite the fact that these changes eliminate tribal-specific NEPA guidance and the only formal channels for tribal engagement on many USDA projects.

This process not only undermines the legal weight of tribal consultation, but also violates the spirit and intent of Executive Order 13175 and the Department's own policies on tribal relations.

VI. Risks to Tribal Clean Energy, Food Sovereignty, and Land Stewardship

USDA plays a critical role in supporting Tribal energy sovereignty, agriculture, and land restoration. The current rule changes expose tribal lands to increased risk of environmental degradation, accelerate

¹² 40 CFR § 1501.4(b)

¹³ 42 U.S.C. § 4336e

¹⁴ 36 CFR § 800.12

¹⁵ 25 U.S.C. § 3002(d)

¹⁶ USDA NEPA Rule, p. 20.

projects that may conflict with tribal climate and conservation priorities, and complicate efforts to pursue culturally appropriate, renewable energy solutions.

Without robust NEPA protections and tribal oversight, USDA programs could inadvertently harm the very communities they intend to serve.

Recommendations

To ensure a lawful, equitable, and trust-based approach to environmental review and Tribal engagement, we urge USDA to:

- Immediately reinstate Tribal-specific NEPA procedures that require early, meaningful consultation.
- Restore agency flexibility to consider place-based, culturally specific impacts of USDA actions.
- Provide dedicated funding to build Tribal capacity to participate in NEPA reviews.
- Reopen the rule for full public and Tribal comment and consultation before finalizing any permanent changes.

The Alliance for Tribal Clean Energy remains committed to working with USDA to build transparent, culturally respectful, and collaborative pathways for clean energy development and environmental stewardship. We urge the Department to reverse course on these harmful changes and re-establish a regulatory framework that upholds Tribal sovereignty and federal trust obligations.

With respect and in service to Tribal Nations,



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