



AMERICAN PETROLEUM INSTITUTE

June 1, 2020

Office of NEPA Policy and Compliance (GC-54)  
ATTN: NEPA/NG Procedures (RIN 1990-AA49)  
U.S. Department of Energy  
1000 Independence Avenue SW  
Washington, DC 20585

**SUBJECT: *Proposal to Update NEPA Implementing Procedures for Natural Gas Act Section 3 Authorizations* — Comments of the American Petroleum Institute**

These comments are submitted by the American Petroleum Institute (API) in response to the Department of Energy's (DOE) Notice of Proposed Rulemaking (NOPR) to update the National Environmental Policy Act (NEPA) implementing procedures, as published in the *Federal Register* on May 1, 2020. Specifically, these comments are in response to the proposed extension of the "Categorical Exclusion" applied to LNG import/export license applications for operational improvements to all classes of LNG import/export licenses (herein, the "Proposed Extension"). For the reasons discussed below, API broadly supports this proposal.

**I. Statement of Interest**

API is a national trade association that represents over 600 companies involved in all aspects of the oil and natural gas industry. API's members include owners and operators of liquefied natural gas (LNG) import and export facilities in the United States and around the world, as well as owners and operators of LNG vessels, global LNG traders, and manufacturers of essential technology and equipment used throughout the LNG value chain. API members also have extensive experience with the drilling and completion techniques used in shale gas development and in producing America's natural gas resources in a safe and environmentally responsible manner.

**II. Proposed Extension of "Categorical Exclusion" Would Support U.S. LNG Exports by Streamlining NEPA Authorization Process**

DOE is proposing to extend the scope of "Categorical Exclusion" to all classes of LNG import/export licenses, including those for construction of major new facilities and operational extensions. Currently, "Categorical Exclusion" applies to "[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under

section 3 of the Natural Gas Act that involve minor operational changes ... but not new construction.”<sup>1</sup>. DOE also proposes to bring its authorization process for natural gas imports from countries with which the U.S. has a free trade agreement in line with the amended section 3(c) of the Natural Gas Act, which states that application to authorize these imports be "deemed consistent with the public interest, and . . . granted without modification or delay."

The preamble to the NOPR states that the proposed extension will "improve the efficiency of the DOE decision-making process by saving time and money in the NEPA review process" while also "eliminating unnecessary environmental documentation." These goals are consistent with related Administration policy, including Executive Order 13807 (E.O. 13807), which directs the Council on Environmental Quality (CEQ) and other agencies to “ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible [.]”<sup>2</sup>

These goals are also aligned with CEQ's NOPR on "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act", published in the Federal Register on January 10, 2020, which aims to revise and modernize CEQ's NEPA regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies. Relevant proposed revisions in that NOPR include streamlining and expanding the use of categorical exclusions,<sup>3</sup> which will better direct agency resources to address major federal decisions that may have significant environmental impacts, and which DOE proposes to do here. Both Democratic and Republican administrations have expressed support for these goals for over a decade, and API commends DOE for putting forward the extension as a concrete proposal to further these goals. API believes the Proposed Extension would streamline the NEPA authorization process and support a robust U.S. LNG export industry.

The scope of DOE’s authority, as laid out in Section 3 of the Natural Gas Act (NGA), is limited to authorization of imports and exports of natural gas. The authority to approve the construction and operation of LNG export facilities falls to the Federal Energy Regulatory Commission (FERC), which is responsible for preparing environmental assessments or impact statements for proposed LNG import and export facilities, as required by NEPA.

Crucially, the proposed extension does not in any way impede FERC’s ability to carry out these responsibilities. Moreover, the scope of DOE’s environmental review responsibilities under both the NGA and NEPA is limited to the assessment of effects that are both proximately caused by DOE’s action (*i.e.*, the approval of exports or imports of the LNG commodity) and for which DOE’s authorization is the “legally relevant” cause.<sup>4</sup> Thus, API agrees that implementing the Proposed Extension would more fully align DOE’s role with applicable case law and allow for the more efficient processing of NEPA authorizations, as it would reduce the potential for redundancy

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<sup>1</sup> “Categorical Exclusion Determinations: B5.7.” Office of NEPA Policy and Compliance. Accessed here: <https://www.energy.gov/nepa/categorical-exclusion-determinations-b57>

<sup>2</sup> “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,” E.O. 13807, § 5(e)(i)(D) (Aug. 15, 2017).

<sup>3</sup> *See, e.g.*, proposed revised 40 C.F.R. § 1508.1(d) and recodified §§ 1501.4 and 1501.5(a), 85 Fed. Reg. 1,684 at 1,728, 1,715 (Jan. 10, 2020).

<sup>4</sup> *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767, 769 (2004). *See also Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189 (D.C. Cir. 2017) (confirming limited scope of environmental review for DOE export authorizations).

in environmental documentation. Reducing such redundancy would support exports of clean-burning domestic natural gas, which DOE has repeatedly found to be consistent with the public interest, and would not have a negative impact on the environmental assessments conducted by either agency.

API suggests that DOE consider modestly expanding the proposed definition of "export" beyond "associated transportation of natural gas by marine vessel," as this definition may exclude some hypothetical operations required to effect the export process that have potential impacts. Expanding the scope of the definition is also in line with the scenarios examined in DOE's "Life Cycle Green House Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update." That report included the liquefaction and loading and unloading steps in its LNG scenarios<sup>5</sup> and still concluded that the "use of U.S. LNG exports for power production in European and Asian markets will not increase global GHG emissions from a life cycle perspective, when compared to regional coal extraction and consumption for power production."<sup>6</sup> Defining "export" to include these processes associated with effecting the exports would allow for a more accurate and transparent accounting of the potential environmental impacts of LNG exports.<sup>7</sup>

### **III. The Comprehensive Benefits of U.S. LNG**

The economic, environmental, and geopolitical benefits of exporting natural gas are considerable and extend beyond the U.S. As such, API broadly supports attempts to streamline DOE's decision-making process with regard to NEPA reviews so as to support a strong and resilient U.S. LNG export industry.

The increased use of LNG offers multiple benefits to importing countries. Increased substitution of U.S. natural gas for other fuels around the world would improve air quality and lower greenhouse gas (GHG) emissions. Many countries rightly view natural gas as a critical fuel for the future and understand that it will play an important role in making their energy systems cleaner, more reliable and more efficient. The economic benefits of increased natural gas use also extend to the industrial sector, where it is increasingly relied upon as a clean and efficient fuel and feedstock for a wide variety of industrial and commercial operations around the world.

A recent and comprehensive study by the International Energy Agency (IEA) titled *The Role of Gas in Today's Energy Transitions* found that natural gas has already played a tangible role in reducing global carbon emissions. The study estimates that, "since 2010, coal-to-gas switching has saved around 500 million tonnes of CO<sub>2</sub> — an effect equivalent to putting an extra 200 million

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<sup>5</sup> NETL, "Life Cycle Green House Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update." Page 14. September 2019.

<sup>6</sup> NETL, "Life Cycle Green House Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update." Page 32. September 2019.

<sup>7</sup> In any event, API believes any impacts assessed as a result of this expanded definition would likely be minimal based on current technology and engineering.

EVs running on zero-carbon electricity on the road over the same period.”<sup>8</sup> The study is consistent with emission trends in the United States over the past decade, where the increased use of natural gas in the power sector has lowered total U.S. emissions to levels not seen in 25 years. More recently, in February 2020, the IEA reported that the U.S. once again led the world in reducing energy-related CO<sub>2</sub> emissions in 2019, largely due to fuel switching to natural gas. The IEA found that coal-to-natural gas switching in the U.S. has led to almost 1 Gigatonne of emissions reductions since 2000.<sup>9</sup>

The increased availability of U.S. LNG is not only good for the United States, but for our trading partners, as well. Increasing the global use of American-sourced natural gas enhances our national security here at home and abroad by providing a reliable alternative to our allies around the world, who would otherwise rely more heavily on foreign energy supplies.

As such, API applauds the DOE’s continued focus on the vital issue of U.S. LNG exports and ongoing efforts to bolster the position of the United States as a dependable LNG supplier in this rapidly expanding global market. Further, API believes that the proposed extension would streamline the NEPA authorization process and as a result, better support a robust U.S. LNG export industry.

Respectfully submitted,

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<sup>8</sup> IEA, *The Role of Gas in Today’s Energy Transitions*. July 2019. Accessed here: <https://www.iea.org/reports/the-role-of-gas-in-todays-energy-transitions>

<sup>9</sup> IEA, “Global CO<sub>2</sub> Emissions in 2019.” February 2020. Accessed here: <https://www.iea.org/articles/global-co2-emissions-in-2019>.