

**ATTORNEYS GENERAL OF THE STATES OF CALIFORNIA, COLORADO,
CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, MAINE, NEW MEXICO,
NEW YORK, RHODE ISLAND, VERMONT, AND WASHINGTON AND
THE COMMONWEALTHS OF MASSACHUSETTS AND VIRGINIA**

June 29, 2026

Via Electronic Submission (www.regulations.gov)

The Honorable Chris Wright
Secretary of the U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

RE: Comments on Direct Final Rule Entitled “Zero-Based Regulating,” 91 Fed. Reg. 31859 (May 29, 2026), Docket ID No. DOE-HQ-2025-0603

Dear Secretary Wright:

The undersigned Attorneys General (the States) submit these comments on the Department of Energy’s (DOE) Direct Final Rule, *Zero-Based Regulating*, 91 Fed. Reg. 31869 (May 29, 2026), Docket ID No. DOE-HQ-2025-0603 (DFR or Rule). DOE’s DFR seeks to add conditional sunset dates into the regulations contained in 28 separate parts of the Code of Federal Regulations (the “covered regulations”)¹ consistent with Executive Order (E.O.) No. 14270, *Zero-Based Regulation to Unleash American Energy* (Apr. 9, 2025). DOE has failed to demonstrate that good cause exists to justify the use of a direct final rule for this significant regulatory action, which effectively repeals hundreds of regulations relating to a wide variety of issues, including access to nuclear and sensitive devices, facilities, and information, nuclear waste storage, and funding for foundational scientific research. In addition, DOE does not provide adequate notice of the basis, substance, and issues addressed in its action, as the DFR omits any individualized consideration or explanation of the intent, basis, and impact of sunseting the covered regulations. These procedural deficiencies deny the States and the public a meaningful opportunity to comment on DOE’s action. Lastly, the DFR is arbitrary and capricious because it provides no reasoned explanation of DOE’s decision to sunset each of the covered regulations.²

¹ “Covered Regulation” is defined in E.O. 14270 to mean a “regulation issued in whole or in part pursuant to a statutory authority listed in” E.O. 14270. 90 Fed. Reg. 14653. “Conditional Sunset Date” is defined to mean “the date a regulation will cease to be effective and be removed from the Code of Federal Regulations, if the agency does not extend the Sunset Date.” *Id.* These terms have the same meanings when used throughout this letter, regardless of whether capitalized.

² The comments herein are focused on the significant procedural deficiencies in the DFR. The States may have substantive comments on the regulations to which DOE is proposing to add conditional sunset dates, but there is insufficient information in the Rule for States to determine whether that is the case. The States therefore reserve their right to raise such comments in a subsequent rulemaking that seeks to sunset any or all of the covered regulations.

The States submit that the comments outlined below are significant and adverse, such that DOE must withdraw the DFR. The States therefore urge DOE to withdraw the DFR in its entirety and issue a new notice of proposed rulemaking that complies with the procedural and substantive requirements of federal law.³

BACKGROUND

I. E.O. 14270 Directs DOE to Issue Regulations that Add a Conditional Sunset Date into Regulations Promulgated Pursuant to Five Separate Statutory Schemes

On April 9, 2025, President Trump issued E.O. 14270, which directs ten federal agencies, including DOE, to “incorporate a sunset provision into their regulations governing energy production to the extent permitted by law, thus compelling those agencies to reexamine their regulations periodically to ensure that those rules serve the public good.” 90 Fed. Reg. 14653. Pertinent to DOE, E.O. 14270 applies to “all regulations issued pursuant to” the Atomic Energy Act of 1954; the National Appliance Energy Conservation Act of 1987; the Energy Policy Act of 1992; the Energy Policy Act of 2005; and the Energy Independence and Security Act of 2007, as well as any amendments to any of these statutes. 90 Fed. Reg. at 14653-14654. E.O. 14270 directs DOE to issue a “sunset rule, effective not later than September 30, 2025, that inserts a Conditional Sunset Date into each of their Covered Regulations” which “shall provide that each Covered Regulation shall have a Conditional Sunset Date of 1 year after the effective date of the sunset rule” and specifies that agencies will “treat Covered Regulations as ceasing to be effective on that date for all purposes” and shall, to the extent permitted by law, “remove it from the Code of Federal Regulations.” 90 Fed. Reg. at 15645.

II. DOE’s Rule Seeks to Implement EO 14270 by Adding Conditional Sunset Dates to 28 Parts of the CFR

On May 29, 2026, DOE issued the DFR along with a near-identical notice of proposed rulemaking (NOPR) of the same name.⁴ The DFR adds conditional sunset dates into 28 parts of Title 10 of the Code of Federal Regulations, “consistent with” E.O. 14270 “and agency policy.” 91 Fed. Reg. at 31869, 31872. The DFR states that “[i]f significant adverse comments are received by June 29, 2026, a timely withdrawal of this rule will be published in the Federal Register and DOE will address the comments received in a subsequent final rule as a response to the companion proposed rule published in this issue of the Federal Register, or take other action as appropriate.” 91 Fed. Reg. at 31869, 31870. If the DFR becomes effective, each covered regulation will “automatically expire and cease to be effective” upon the conditional sunset date unless the Secretary of Energy decides to extend the regulation’s conditional sunset date. 91 Fed. Reg. at 31869-31870, 31877.

In the DFR, DOE clarifies that is not proposing to add conditional sunset dates to all regulations that were promulgated pursuant to the covered statutes, because doing so “may have

³ The States are simultaneously submitting comments on DOE’s Notice of Proposed Rulemaking, *Zero-Based Regulating*, 91 Fed. Reg. 31985 (May 29, 2026) (NOPR).

⁴ See footnote 3, *supra*.

a chilling effect on the market.” 91 Fed. Reg. at 31870. By way of example, DOE states that “10 CFR parts 820, 830, and 835 either directly or indirectly serve as underlying nuclear safety requirements for Price Anderson Amendments Act (PAAA) indemnification, which provides a system of financial protection for persons (including DOE contractors) who may be liable and persons who may be injured by a nuclear incident.” *Id.* DOE further explains that the sunset of these regulations could negatively affect DOE’s ability to secure contracts necessary to perform its statutory duties. *See id.*

The DFR states that “the President’s directive [in E.O. 14270] provides an independent and sufficient justification for this rulemaking” and also contends that it is “good public policy to routinely review agency regulations and [] this sunset rule is an appropriate mechanism to compel that review.” 91 Fed. Reg. at 31871. DOE also seeks to justify the DFR by relying on an assertion that other agencies and authorities have previously sought to sunset regulations, including a 2021 Department of Health and Human Services sunset rule that was subsequently withdrawn, sunset efforts undertaken by the State of Idaho and the country of South Korea, and the fact that the Obama Administration suggested that sunset rules could be a useful tool. 91 Fed. Reg. at 31871-31872. The DFR also cites DOE’s “housekeeping authority” found in 5 U.S.C. § 301 and 42 U.S.C. § 7254, suggesting that both provide the Secretary of Energy with authority to issue a sunset rule. 91 Fed. Reg. at 31871.

DOE also asserts that direct final rules are “used for non-controversial regulatory amendments,” and that here DOE relies on “the ‘unnecessary’ prong of the ‘good cause’ exemption in 5 U.S.C. 553(b)(B)” to bypass the APA’s notice and comment requirements. *See* 91 Fed. Reg. at 31871 & fn. 2.

III. The APA Establishes Procedures that DOE Must Follow When Adding Conditional Sunset Dates to Existing Regulations

The Administrative Procedure Act, 5 U.S.C. §§ 551, et seq. (APA), prescribes procedures for federal agency rulemakings to formulate, amend, or repeal a “rule,” which is defined to include any “agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.” 5 U.S.C. § 551(4)-(5). Agencies typically follow the procedures at section 5 U.S.C. § 553, known as “informal” or “notice-and-comment” procedures.⁵ “These requirements apply with the same force when an agency seeks to delay or repeal a previously promulgated final rule.” *Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 113 (2d Cir. 2018); *see also Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017) (confirming that an agency normally “may not alter [a legislative] rule without notice and comment”). To ensure public participation in the informal rulemaking process, agencies are required to: provide adequate notice of the proposed rulemaking in the Federal Register unless an exception applies (5 U.S.C. § 553(b)); provide “interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation” (5 U.S.C. § 553(c)); “incorporate in the rules adopted a concise general statement of their basis and purpose” (*id.*); and publish the

⁵ Congressional Research Service, *A Brief Overview of Rulemaking and Judicial Review* (Mar. 27, 2017), <https://crsreports.congress.gov/product/pdf/R/R41546>.

rule not less than 30 days before its effective date unless an exception applies (5 U.S.C. § 553(d)).

The notice required by section 553(b) of the APA must include, *inter alia*, reference to the legal authority under which the rule is proposed, as well as “either the terms or substance of the proposed rule or a description of the subjects and issues involved.” 5 U.S.C. § 553(b)(2)-(3). In general, the agency must provide “sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.” *Honeywell Int’l v. EPA*, 372 F.3d 441, 449 (D.C. Cir. 2004) (citing *Fla. Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988)).

Courts have characterized the APA as requiring responses to “significant” comments as part of the agency’s obligation to “give interested persons an opportunity to participate” and finalize the rule “[a]fter consideration of the relevant matter presented.” 5 U.S.C. § 553(c); *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 96 (2015) (“An agency must consider and respond to significant comments received during the period for public comment.”); *see also Am. Min. Cong. v. EPA*, 965 F.2d 759, 771 (9th Cir. 1992) (describing “significant comments” as “those which raise relevant points and which, if adopted, would require a change in the agency’s proposed rule”).

Section 553(b)(B) of the APA provides a “good cause” exception that exempts from the APA’s notice and comment requirements situations where “the agency for good cause finds” the procedures provided under section 553 “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. § 553(b)(B). The good cause exception must be “narrowly construed and only reluctantly countenanced.” *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012) (quotation marks omitted). And the good cause exception generally should not be utilized where the rule has substantive effects or is reasonably expected to generate adverse comments. *See id.* at 94 (explaining “unnecessary” prong is “confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public”); *Nat. Res. Def. Council*, 894 F.3d at 115 (finding rule did not satisfy “unnecessary” prong of good cause exception because rule was “anything but inconsequential”). The good cause exception by its terms only pertains to notice and comment procedures and an agency invoking the good cause exception must provide notice of its good cause finding, the basis for the agency’s decision, and the information the agency considered in deciding to promulgate the rule. 5 U.S.C. § 553(b)(B).

ARGUMENT

I. DOE’s DFR Is Procedurally Defective and Must Be Withdrawn

A. DOE Does Not Provide Good Cause Supporting Its Decision to Proceed Via Direct Final Rule; This Rulemaking Is Significant

DOE asserts that the DFR is non-controversial, and therefore concludes that notice and comment rulemaking is unnecessary. 91 Fed. Reg. at 31871. Courts have found that a good cause exception on the basis that procedures are “unnecessary” should be “confined to those situations in which the administrative rule is a “routine determination, insignificant in nature and impact, and inconsequential to the industry and the public.” *Mack Trucks, Inc.*, 682 F.3d at 94; *see also Nat’l Nutritional Foods Ass’n v. Kennedy*, 572 F.2d 377, 385 (2d Cir. 1978) (finding that notice

and comment may be “unnecessary” where minor or merely technical amendments are involved and “the public is not particularly interested.”). The DFR does not contain any information suggesting that DOE actually determined that the addition of a conditional sunset date to each, or even any, of the 28 separate parts of the Code of Federal Regulations identified in the DFR is “routine,” “insignificant in nature and impact,” or “inconsequential” to the public, save for its bald conclusion that the rule is “non-controversial.” 91 Fed. Reg. at 31871. In fact, the DFR contains no information at all suggesting that DOE conducted an individualized and considered decision-making process before tagging these portions of the Code of Federal Regulations to be sunset.

As an initial matter, it cannot be said that the addition of a conditional sunset date into hundreds of regulations is routine. A “routine” agency action typically involves minor or technical amendments to a rule, such as technical corrections or administrative clarifications. *See, e.g., McChesney v. Petersen*, 275 F.Supp.3d 1123, 1136 (D. Neb. 2016) (characterizing extension of existing program and removal of requirement that fines be paid by check or money order as “mere technical changes” and “not an exercise of substantive agency decision-making”; *see also*, 89 Fed. Reg. 62872 (EPA made minor, non-substantive technical corrections and clarifications via an interim final rule that did not change any substantive requirements of the rule). Taking one regulatory action that adds a date after which hundreds of regulations covering numerous different issues, ranging from access to nuclear devices and sensitive and restricted information and facilities to criteria for identifying nuclear waste storage options to funding for foundational science grants, will no longer be effective simply cannot be deemed a “routine” determination.

Moreover, the DFR itself notes that it is not “insignificant”: it states “OIRA has determined that this regulatory action is a ‘significant regulatory action’ under EO 12866.” 91 Fed. Reg. at 31871. Under Executive Order 12866, a regulation is “significant” if it (1) has an economic effect over \$100 million or materially adversely affects the economy, (2) is inconsistent with another agency’s action, (3) materially alters the budgetary impact of federal financial assistance or recipients’ rights, or (4) raises novel legal or policy issues. E.O. 12866 Sec. 3(f) (1993). DOE does not reconcile its conclusion that the DFR is non-controversial and, therefore, that notice and comment rulemaking is not required, with OIRA’s determination that this is a significant regulatory action.

DOE also fails to address whether the DFR is inconsequential to the industry and the public, perhaps because it cannot do so. The facts that the States are submitting this comment letter and that at least 15 other comment letters have been submitted as of June 26, 2026 regarding the DFR and the NOPR suggest that this rulemaking is of import to the States and the general public. Moreover, the volume and content of comments received will necessarily underestimate the DFR’s importance to the public because DOE has failed to provide sufficient factual detail and rationale for the Rule to allow interested parties a meaningful opportunity to comment.⁶

⁶ While it does not appear that DOE is taking this position, courts also may analyze whether notice and comment rulemaking is “contrary to the public interest,” that is, whether “ordinary procedures – generally presumed to serve the public interest – would in fact harm that interest.” *Mack Trucks, Inc.*, 682 F.3d at 94. Courts doing so view the “unnecessary” prong of the good

Under any reasonable interpretation of the good cause exemption, repealing over 500 substantive regulations covering varied subject matter cannot be “routine,” “insignificant,” or “inconsequential,” and DOE has failed to provide any information in the DFR that would support its conclusion to the contrary. The DFR therefore is procedurally defective and must be withdrawn.

B. DOE’s Notice Fails to Explain the Rule and DOE’s Reasoning For the Rule, Denying a Meaningful Opportunity for Public Comment

It is fundamental that DOE must provide sufficient information regarding the basis for and substance of its decision to add conditional sunset dates to 28 separate parts of the Code of Federal Regulations to allow for meaningful and informed public comment. The APA requires that DOE’s notice describe the Rule’s “terms or substance” or “the subject and issues involved.” 5 U.S.C. § 553(b)(3). Courts have elaborated that agencies “must provide notice sufficient to fairly apprise interested persons of the subjects and issues before the Agency,” *Nat. Res. Def. Council, Inc. v. EPA*, 863 F.2d 1420, 1429 (9th Cir. 1988), and give “an accurate picture of the reasoning” behind the relevant rule, *Conn. Light & Power Co. v. Nuclear Regul. Comm’n*, 673 F.2d 525, 530 (D.C. Cir. 1982).⁷

The DFR is devoid of any meaningful information regarding the basis for DOE’s decision to add conditional sunset dates to each of 28 separate parts of the Code of Federal Regulations, which sunset dates would apply to over 500 separate regulations contained in those parts. As noted above, DOE cites numerous authorities that it purportedly relied on as the basis for its determination, including E.O. 14270, an assertion that other agencies and authorities have previously sought to sunset regulations, and sunset efforts undertaken by a state and another country. 91 Fed. Reg. at 31871-31872. The DFR also cites DOE’s “housekeeping authority” found in 5 U.S.C. § 301 and 42 U.S.C. § 7254, suggesting that both provide the Secretary of Energy with authority to issue this sunset rule. 91 Fed. Reg. at 31871. DOE then concludes that adding conditional sunset dates to these 28 parts of the Code of Federal Regulations “is consistent with applicable law.” 91 Fed. Reg. at 31870. But DOE’s conclusion based on general cites to questionably relevant authorities is a far cry from a detailed explanation of the basis for its decision to sunset each of these 28 particular parts of the Code of Federal Regulations. Indeed, DOE provides more information about its decision *not* to add a conditional sunset date to several parts of the Code of Federal Regulations than it does about its decision to add one to the covered regulations. 91 Fed. Reg. at 31870.

cause exception through the lens of the public interest and determine whether APA procedures are unnecessary in light of the public interest in expedient governmental action. However, any perceived urgency here is manufactured by DOE and will not advance the public interest in any regard.

⁷ If DOE issues a final final rule following receipt of comments on the DFR, that rule also would be subject to the requirements of 5 U.S.C. § 553(c), which requires the agency to disclose information about the basis and purpose of the rule. *See, e.g.*, Administrative Congress of the United States, Recommendation 2024-6, 89 Fed. Red. 106409 (an agency using a direct final rule should “provide a statement of the rule’s basis and purpose” that “explains the issues the agency considered in developing the rule”). Moreover, the DFR itself does not meet the requirements of 5 U.S.C. § 553(c) for the same reasons notice was inadequate under § 553(b)(3).

The DFR also lacks any description of the issues that DOE considered in deciding to add a conditional sunset date to the covered regulations generally, let alone any information suggesting that DOE conducted an individualized analysis of the purpose and impact of sunseting each of the covered regulations. As noted above, DOE asserts that adding a conditional sunset date to the covered regulations is “consistent with applicable law” but provides no information regarding how it reached this decision with regard to all of the covered regulations generally, let alone to each individual covered regulation specifically. Nor does DOE explain what the impact will be of adding a conditional sunset date to any one of the covered regulations.⁸ Nowhere in the DFR does DOE provide any explanation of what each of the covered regulations does, what the effect of sunseting each part would be, what regulations or other mechanisms, if any, would remain in place after the regulations sunset, how the relevant programs would function after sunseting, or why DOE selected these sections to sunset, but not others. Because DOE provides no such general analysis, let alone individualized analysis of each part and regulation it intends to sunset, neither the public nor the States have sufficient information to understand what the DFR would do if it becomes effective in July 2026.

DOE attempts to downplay the Rule’s impacts by claiming that it will conduct regulatory review of the covered regulations before they actually cease to be effective. 91 Fed. Reg. at 31871. However, nothing in the DFR or in E.O. 14270 requires such review. Moreover, the time for DOE to analyze whether regulations should be sunset in accordance with E.O. 14270 is now, not after it already has added a conditional sunset date to a regulation, at which point the regulation will sunset and cease effectiveness if DOE does not take *further* action. DOE’s action here turns the rulemaking process on its head, such that regulations that already have been approved in compliance with law will automatically be written off the books if DOE does not, either intentionally or unintentionally, take further action. Whether or not DOE conducts further review, the legal effect of the DFR amounts to a regulatory repeal with a delayed effective date.

DOE’s failures completely obscure the impact of the addition of conditional sunset dates to the covered regulations. Courts have found this type of obfuscation equates to failure to provide a meaningful opportunity for public comment. *Shands Jacksonville Med. Ctr. v. Burwell*, 139 F. Supp. 3d 240, 265 (D.D.C. 2015) (APA requires disclosure of assumptions critical to the agency’s decision in order to facilitate meaningful comment); *see also Centro Legal de la Raza v. Exec. Off. for Immigr. Review*, 524 F. Supp. 3d 919, 962 (N.D.Cal. 2021). This failure to provide a meaningful opportunity to comment renders the DFR invalid.

Moreover, given the sheer number and breadth of the regulations DOE is proposing to sunset, DOE’s 30-day comment period is woefully inadequate and would not allow sufficient time to meaningfully comment on the DFR even if DOE had provided the information required by law. *See Nat’l Lifeline Ass’n v. Fed. Commc’ns Comm’n*, 921 F.3d 1102, 1117 (D.C. Cir. 2019) (“When substantial rule changes are proposed, a 30-day comment period is generally the *shortest* time period sufficient for interested persons to meaningfully review a proposed rule and provide informed comment.”) (emphasis added).

⁸ As noted above, DOE asserts that it will conduct additional regulatory review, but fails to address the fact that if the DFR goes into effect in July 2026 and DOE does not conduct such further review, each of the covered regulations will cease to be effective in July 2027.

DOE therefore must withdraw the DFR in its entirety and issue a new notice of proposed rulemaking that complies with the procedural and substantive requirements of federal law.

C. The Apparent Significance of the Covered Regulations Illustrates the Importance of Robust Notice and Comment Rulemaking Procedures for This Rule

Review of several of the covered regulations identified in the DFR reveals the glaring problems with DOE’s approach. For example:

- The DFR proposes to add a one-year conditional sunset date to 10 C.F.R. Part 605, which governs the award and administration of grants and cooperative agreements by the DOE Office of Science (SC) for basic and applied research, educational or training activities, and scientific conferences. This section—which is comprised of 20 separate regulations—covers the issuance of grants, often funding years of research, in important program areas such as basic energy sciences, health and environmental research, and university and science education programs. Yet the DFR contains no information regarding why DOE is proposing to sunset these regulations, how doing so would be “consistent with applicable law,” or what the impact of sunseting these regulations would be. Moreover, without sufficient explanation from DOE, it is unclear what would happen to the SC and all funding pursuant to these regulations if sunset. DOE does not provide information regarding the status of the SC, whether the funding will still be available through other channels, whether funds will be redirected, or whether existing grantees will be eligible for continued funding. Substantial funding under this program goes to universities, National Laboratories, and other entities in the States. Without an explanation of how sunseting these regulations would affect the underlying program, the States cannot fully evaluate the impact of the DFR within their borders. These issues and others must be explained in the DFR so that States and the public can meaningfully engage in the public comment process.
- DOE similarly proposes to add a one-year conditional sunset date to 10 CFR Part 960, which establishes guidelines for the screening of potential sites for a nuclear waste repository. The DFR contains no analysis or explanation of DOE’s decision to add a conditional sunset date to these regulations, including its intent or what standards will apply to the screening of potential nuclear waste sites if these regulations are sunset. There are currently no permanent geologic repositories for disposal of nuclear waste anywhere in the nation. Between the projected growth in nuclear energy and the lack of a long-term strategy for a permanent disposal solution, the proposed sunseting of these regulations without further explanation is concerning. DOE must provide more information regarding what standards will apply to the screening of potential nuclear waste storage sites if these regulations are sunset. Without further information, the States cannot fully evaluate the impact of the DFR and meaningfully engage in the public comment process.

- DOE also proposes to add a five-year conditional sunset date to 10 C.F.R. Parts 712, 725, 860, 862, 1016, 1045, and 1046, which sections generally regulate access to nuclear devices and sensitive and restricted information, data, and facilities. 91 Fed. Reg. at 31870. DOE’s rationale for adding a five-year sunset date to these regulations rather than a one-year date is that “[t]he identified parts implicate DOE and [National Nuclear Security Administration, or] NNSA abilities to protect DOE and NNSA personnel, facilities, materials, and information. Thus, the Secretary has determined that an extension of the conditional sunset date for these parts for a period of five years is warranted. Accordingly, instead of a conditional sunset date of one year from the effective date, the DFR sets a conditional sunset date that is 5 years from the effective date for these provisions.”⁹ DOE’s own explanation, which indicates that these regulations are important, proves the need for DOE to explain its rationale for adding a conditional sunset date to each of these parts and the impact of doing so. As written, the DFR provides no information regarding why DOE is adding a conditional sunset date to any of these regulations nor how access to nuclear and sensitive devices, information, and facilities will be regulated, if at all, if these regulations are sunset and become ineffective.

II. DOE Also Must Withdraw the DFR Because It Is Arbitrary and Capricious

For many of the same reasons discussed above, the DFR is arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A). In particular, DOE does not explain what the covered regulations do, why they were selected, or why each covered regulation should be sunset, and certainly has not explained each sunset action under statutorily relevant factors. Accordingly, DOE has not “articulate[d] a satisfactory explanation for its action,” and the DFR is arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also, Kingdom v. Trump*, No. 1-25-cv-00691, 2025 WL 1568238 at *10 (D.D.C. June 3, 2025) (the fact that an agency’s actions were undertaken to fulfill a presidential directive does not constitute reasoned decision-making); *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 514–15 (2009) (an agency changing course, e.g., by rescinding or sunseting properly enacted regulations based on a change in policy, must acknowledge and explain this change). DOE must withdraw the DFR in its entirety.

CONCLUSION

Because the foregoing comments are significant and adverse, DOE must withdraw the DFR in its entirety. If DOE wishes to add conditional sunset dates to regulations issued pursuant to the Atomic Energy Act of 1954, the National Appliance Energy Conservation Act of 1987, the Energy Policy Act of 1992, the Energy Policy Act of 2005, or the Energy Independence and Security Act of 2007, as well as any amendments to any of these statutes, then it should follow the APA’s notice and comment rulemaking procedures and issue a new notice of proposed rulemaking that complies with the procedural and substantive requirements of federal law.

⁹ DOE’s explanation for its decision to add a five-year conditional sunset date to these Parts of the Code of Federal Regulations could be viewed as undermining the DFR as a whole: it is difficult to reconcile DOE’s determination that this regulatory action is truly so routine and insignificant that notice and comment rulemaking is unnecessary with this statement that some of the covered regulations are so important that a five-year conditional sunset date is too short.

Respectfully Submitted,

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**ATTORNEYS GENERAL OF THE STATES OF CALIFORNIA, COLORADO,
CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, MAINE, NEW MEXICO,
NEW YORK, RHODE ISLAND, VERMONT, AND WASHINGTON AND
THE COMMONWEALTHS OF MASSACHUSETTS AND VIRGINIA**

June 29, 2026

Via Electronic Submission (www.regulations.gov)

The Honorable Chris Wright
Secretary of the U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

RE: Comments on Notice of Proposed Rulemaking Entitled “Zero-Based Regulating,” 91 Fed. Reg. 31985 (May 29, 2026), Docket ID No. DOE-HQ-2025-0603

Dear Secretary Wright:

The undersigned Attorneys General (the States) submit these comments on the Department of Energy’s (DOE) Proposed Rule, *Zero-Based Regulating*, 91 Fed. Reg. 31985 (May 29, 2026), Docket ID No. DOE-HQ-2025-0603 (NOPR or Proposed Rule). DOE’s Proposed Rule seeks to add conditional sunset dates into the regulations contained in 28 separate parts of the Code of Federal Regulations (the “covered regulations”)¹ consistent with Executive Order (E.O.) No. 14270, *Zero-Based Regulation to Unleash American Energy* (Apr. 9, 2025). As with the nearly-identical Direct Final Rule that DOE issued concurrently with the Proposed Rule, DOE has failed to provide adequate notice of the basis, substance, and issues addressed in this significant regulatory action, as the Proposed Rule omits any individualized consideration or explanation of the intent, basis, and impact of sunseting the covered regulations. These procedural deficiencies deny the States and the public a meaningful opportunity to comment on DOE’s action, which effectively repeals hundreds of regulations relating to a wide variety of issues, including access to nuclear and sensitive devices, facilities, and information, nuclear waste storage, and funding for foundational scientific research. The NOPR also is arbitrary and capricious because it provides no reasoned explanation of DOE’s decision to sunset each of the covered regulations.² Lastly, the NOPR’s requests for comments on the “anti-backsliding”

¹ “Covered Regulation” is defined in E.O. 14270 to mean a “regulation issued in whole or in part pursuant to a statutory authority listed in” E.O. 14270. 90 Fed. Reg. 14653. For DOE, those authorities are the Atomic Energy Act of 1954; the National Appliance Energy Conservation Act of 1987; the Energy Policy Act of 1992; the Energy Policy Act of 2005; and the Energy Independence and Security Act of 2007, as well as any amendments to any of these statutes. *Id.* at 14653-14654. “Conditional Sunset Date” is defined to mean “the date a regulation will cease to be effective and be removed from the Code of Federal Regulations, if the agency does not extend the Sunset Date.” *Id.* at 14653. These terms have the same meanings when used throughout this letter, regardless of whether capitalized.

² The comments herein are focused on the significant procedural deficiencies in the NOPR. The States may have substantive comments on the regulations to which DOE is proposing to add

provisions in the Energy Policy and Conservation Act (EPCA) and on the costs and benefits of sunseting the covered regulations are improper and require additional information from DOE to allow for meaningful comment.

The States therefore urge DOE to withdraw the Proposed Rule in its entirety and issue a new notice of proposed rulemaking that complies with the procedural and substantive requirements of federal law.³

BACKGROUND

I. E.O. 14270 Directs DOE to Issue Regulations that Add a Conditional Sunset Date into Regulations Promulgated Pursuant to Five Separate Statutory Schemes

On April 9, 2025, President Trump issued E.O. 14270, which directs ten federal agencies, including DOE, to “incorporate a sunset provision into their regulations governing energy production to the extent permitted by law, thus compelling those agencies to reexamine their regulations periodically to ensure that those rules serve the public good.” 90 Fed. Reg. at 14653. Pertinent to DOE and as noted in footnote 1, *supra*, E.O. 14270 applies to “all regulations issued pursuant to” the Atomic Energy Act of 1954; the National Appliance Energy Conservation Act of 1987; the Energy Policy Act of 1992; the Energy Policy Act of 2005; and the Energy Independence and Security Act of 2007, as well as any amendments to any of these statutes. 90 Fed. Reg. at 14653-14654. E.O. 14270 directs DOE to issue a “sunset rule, effective not later than September 30, 2025, that inserts a Conditional Sunset Date into each of their Covered Regulations” which “shall provide that each Covered Regulation shall have a Conditional Sunset Date of 1 year after the effective date of the sunset rule” and specifies that agencies will “treat Covered Regulations as ceasing to be effective on that date for all purposes” and shall, to the extent permitted by law, “remove it from the Code of Federal Regulations.” 90 Fed. Reg. at 15645.

II. DOE Seeks to Implement EO 14270 by Adding Conditional Sunset Dates to 28 Parts of the CFR

On May 29, 2026, DOE issued the NOPR along with a near-identical direct final rule (DFR) of the same name.⁴ The NOPR proposes “regulatory revisions identical to those set forth in a direct final rule published elsewhere in this issue of the Federal Register” and clarifies that, if DOE “receives significant adverse comments, DOE will publish a notice of withdrawal for the

conditional sunset dates, but there is insufficient information in the NOPR—or the companion direct final rule (DFR) for that matter—for States to determine whether that is the case. The States therefore reserve their right to raise such comments in a subsequent rulemaking that seeks to sunset any or all of the covered regulations.

³ The States are simultaneously submitting comments on DOE’s Direct Final Rule, *Zero-Based Regulating*, 91 Fed. Reg. 31859 (May 29, 2026) (DFR). Those comments are very similar to these comments on the NOPR given that the two regulatory actions themselves are nearly identical.

⁴ See footnote 3, *supra*.

direct final rule and will proceed with this proposed rule.” 91 Fed. Reg. at 31985. The regulatory revisions found in both the DFR and the NOPR would, if finalized, insert conditional sunset dates into 28 parts of Title 10 of the Code of Federal Regulations, “consistent with” E.O. 14270 “and agency policy.” 91 Fed. Reg. at 31985.

In the NOPR, DOE clarifies that is not proposing to add conditional sunset dates to all regulations that were promulgated pursuant to the covered statutes, because doing so “may have a chilling effect on the market.” 91 Fed. Reg. at 31986. By way of example, DOE states that “10 CFR parts 820, 830, and 835 either directly or indirectly serve as underlying nuclear safety requirements for Price Anderson Amendments Act (PAAA) indemnification, which provides a system of financial protection for persons (including DOE contractors) who may be liable and persons who may be injured by a nuclear incident.” DOE further explains that the sunseting of these regulations could negatively affect DOE’s ability to secure contracts necessary to perform its statutory duties. *Id.*

There are two key differences between DOE’s DFR and the NOPR. First, while both the DFR and the NOPR seek to add five-year conditional sunset dates to the regulations found in 10 CFR Parts 712, 725, 860, 862, 1016, 1045, and 1046, the NOPR alone seeks “comment on the costs and benefits of extending these regulations.” 91 Fed. Reg. at 31986. Second, the NOPR seeks comment regarding “the effects of [the Energy Policy and Conservation Act]’s anti-backsliding provision on technological developments, resource allocations, market forces, and unnecessary intervention into consumer, industrial and energy markets.” 91 Fed. Reg. at 31987.

With regard to justification and authority for the NOPR, DOE states that “the President’s directive [in E.O. 14270] provides an independent and sufficient justification for this proposed rulemaking” and also contends that it is “good public policy to routinely review agency regulations and [] this sunset rule is an appropriate mechanism to compel that review.” 91 Fed. Reg. at 31986-31987. DOE also seeks to justify the Proposed Rule by relying on an assertion that other agencies and authorities have previously sought to sunset regulations, including a 2021 Department of Health and Human Services sunset rule that was subsequently withdrawn, sunset efforts undertaken by the State of Idaho and the country of South Korea, and the fact that the Obama Administration suggested that sunset rules could be a useful tool. 91 Fed. Reg. at 31987. The NOPR also cites DOE’s “housekeeping authority” found in 5 U.S.C. § 301 and 42 U.S.C. § 7254, suggesting that both provide the Secretary of Energy with authority to issue a sunset rule. 91 Fed. Reg. at 31987.

III. The APA Establishes Procedures that DOE Must Follow When Adding Conditional Sunset Dates to Existing Regulations

The Administrative Procedure Act, 5 U.S.C. §§ 551, et seq. (APA), prescribes procedures for federal agency rulemakings to formulate, amend, or repeal a “rule,” which is defined to include any “agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.” 5 U.S.C. § 551(4)-(5). Agencies typically follow the procedures at section 5 U.S.C. § 553, known as “informal” or “notice-and-comment”

procedures.⁵ “These requirements apply with the same force when an agency seeks to delay or repeal a previously promulgated final rule.” *Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 113 (2d Cir. 2018); *see also Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017) (confirming that an agency normally “may not alter [a legislative] rule without notice and comment”). To ensure public participation in the informal rulemaking process, agencies are required to: provide adequate notice of the proposed rulemaking in the Federal Register unless an exception applies (5 U.S.C. § 553(b)); provide “interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation” (5 U.S.C. § 553(c)); “incorporate in the rules adopted a concise general statement of their basis and purpose” (*id.*); and publish the rule not less than 30 days before its effective date unless an exception applies (5 U.S.C. § 553(d)).

The notice required by section 553(b) of the APA must include, *inter alia*, reference to the legal authority under which the rule is proposed, as well as “either the terms or substance of the proposed rule or a description of the subjects and issues involved.” 5 U.S.C. 553(b)(2)-(3). In general, the agency must provide “sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.” *Honeywell Int’l v. EPA*, 372 F.3d 441, 449 (D.C. Cir. 2004) (citing *Fla. Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988)).

Courts have characterized the APA as requiring response to “significant” comments as part of the agency’s obligation to “give interested persons an opportunity to participate” and finalize the rule “[a]fter consideration of the relevant matter presented.” 5 U.S.C. § 553(c); *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 96 (2015) (“An agency must consider and respond to significant comments received during the period for public comment.”); *see also Am. Min. Cong. v. EPA*, 965 F.2d 759, 771 (9th Cir. 1992) (describing “significant comments” as “those which raise relevant points and which, if adopted, would require a change in the agency’s proposed rule.”)

Section 553(b)(B) of the APA provides a “good cause” exception that exempts from the APA’s notice and comment requirements situations where “the agency for good cause finds” the procedures provided under § 553 “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. § 553(b)(B). The good cause exception must be “narrowly construed and only reluctantly countenanced.” *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012) (quotation marks omitted). And the good cause exception by its terms only pertains to notice and comment procedures and does not obviate the agency’s need to comply with the fundamental requirements of the APA, and an agency invoking the good cause exception must provide notice of its good cause finding, including the basis for the agency’s decision and the information the agency considered in deciding to promulgate the rule. 5 U.S.C. § 553(b)(B).

⁵ Congressional Research Service, *A Brief Overview of Rulemaking and Judicial Review* (Mar. 27, 2017), <https://crsreports.congress.gov/product/pdf/R/R41546>.

ARGUMENT

I. DOE's NOPR is Procedurally Defective and Must Be Withdrawn

DOE's claims of insignificance of the regulatory action that DOE seeks here—the addition of conditional sunset dates to 28 separate parts of the Code of Federal Regulations comprised of hundreds of individual regulations on vastly different topics—are belied by DOE's failure to include in the NOPR or its companion DFR even the most basic information about its decision to add conditional sunset dates to these regulations. Neither the NOPR nor the DFR includes any meaningful information about the covered regulations themselves, why DOE decided to sunset these particular regulations and not others, the purpose of DOE's regulatory action, or what will happen to the remaining statutory and regulatory schemes related to the covered regulations if the covered regulations are sunset.

Indeed, as noted in the States' comment letter on DOE's companion DFR, DOE asserts that this rulemaking is non-controversial and therefore concludes that notice and comment rulemaking is unnecessary. 91 Fed. Reg. at 31871. But courts have found that a good cause exception on the basis that procedures are “unnecessary” should be “confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and the public.” *Mack Trucks, Inc.*, 682 F.3d at 94; *see also Nat'l Nutritional Foods Ass'n. v. Kennedy*, 572 F.2d 377, 385 (2d Cir. 1978) (finding that notice and comment may be “unnecessary” where minor or merely technical amendments are involved and “the public is not particularly interested.”). Under any reasonable interpretation of the good cause exemption, repealing over 500 substantive regulations covering varied subject matter cannot be “routine,” “insignificant,” or “inconsequential” and DOE has failed to provide any information in the DFR that would support its conclusion to the contrary. The DFR therefore is procedurally defective and must be withdrawn.

As noted below, DOE's NOPR similarly must be withdrawn, as DOE has failed to provide adequate information to allow the public to meaningfully comment on the Proposed Rule.

A. DOE's NOPR Fails to Explain the Proposed Rule and DOE's Reasoning for the Proposed Rule, Denying a Meaningful Opportunity for Public Comment

It is fundamental that DOE must provide sufficient information regarding the basis for and substance of its decision to add conditional sunset dates to 28 separate parts of the Code of Federal Regulations to allow for meaningful and informed public comment. The APA requires that DOE's notice describe the Rule's “terms or substance” or “the subject and issues involved.” 5 U.S.C. § 553(b)(3). Courts have elaborated that agencies “must provide notice sufficient to fairly apprise interested persons of the subjects and issues before the Agency,” *Nat. Res. Def. Council, Inc. v. EPA*, 863 F.2d 1420, 1429 (9th Cir. 1988), and give “an accurate picture of the reasoning” behind the proposed rule, *Conn. Light & Power Co. v. Nuclear Regul. Comm'n*, 673 F.2d 525, 530 (D.C. Cir. 1982).

The NOPR is devoid of any meaningful information regarding the basis for DOE's decision to add conditional sunset dates to each of 28 separate parts of the Code of Federal Regulations, which sunset dates would apply to over 500 separate regulations contained in those

parts. As noted above, DOE cites numerous authorities that it purportedly relied on as the basis for its determination, including E.O. 14270, an assertion that other agencies and authorities have previously sought to sunset regulations, and sunset efforts undertaken by a state and another country, 91 Fed. Reg. at 31986-31987. The NOPR also cites DOE's "housekeeping authority" found in 5 U.S.C. § 301 and 42 U.S.C. § 7254, suggesting that both provide the Secretary of Energy with authority to issue this sunset rule. 91 Fed. Reg. at 31987. DOE then concludes that adding conditional sunset dates to these 28 parts of the Code of Federal Regulations "is consistent with applicable law." 91 Fed. Reg. at 31987. But DOE's conclusion based on general cites to questionably relevant authorities is a far cry from a detailed explanation of the basis for its decision to sunset each of these 28 particular parts of the Code of Federal Regulations. Indeed, DOE provides more information about its decision *not* to add a conditional sunset date to several parts of the Code of Federal Regulations than it does about its decision to add one to the covered regulations. 91 Fed. Reg. at 31987.

The NOPR also lacks any description of the issues that DOE considered in deciding to add a conditional sunset date to the covered regulations generally, let alone any information suggesting that DOE conducted an individualized analysis of the purpose and impact of sunsetting each of the covered regulations. As noted above, DOE asserts that adding a conditional sunset date to the covered regulations is "consistent with applicable law" but provides no information regarding how it reached this decision with regard to all of the covered regulations generally, let alone to each individual covered regulation specifically. Nor does DOE explain what the impact will be of adding a conditional sunset date to any one of the covered regulations. Nowhere in the NOPR does DOE provide any explanation of what each of the covered regulations does, what the effect of sunsetting each part would be, what regulations or other mechanisms, if any, would remain in place after the regulations sunset, how the relevant programs would function after sunsetting, or why DOE selected these sections to sunset, but not others. Because DOE provides no such general analysis, let alone individualized analysis of each part and regulation it intends to sunset, neither the public nor the States have sufficient information to understand what the additions proposed by the NOPR would do.

DOE attempts to downplay the significance of the Proposed Rule by claiming that it will conduct regulatory review of the covered regulations before they actually cease to be effective. 91 Fed. Reg. at 31987. However, nothing in the NOPR or in E.O. 14270 requires such review, and this assertion is nonbinding and unenforceable. Moreover, the time for DOE to analyze whether regulations should be sunset in accordance with E.O. 14270 is now during the rulemaking process, not after it already has added a conditional sunset date to a regulation, at which point the regulation will sunset and cease effectiveness if DOE does not take *further* action. DOE's action here turns the rulemaking process on its head, such that effective regulations that already have been approved in compliance with law will automatically be written off the books if DOE does not, either intentionally or unintentionally, take further action. Whether or not DOE conducts further review, the legal effect of DOE's Proposed Rule amounts to a regulatory repeal with a delayed effective date.

DOE's failures completely obscure the impact of the addition of conditional sunset dates to the covered regulations. Courts have found this type of obfuscation equates to failure to provide a meaningful opportunity for public comment. *Shands Jacksonville Med. Ctr. v. Burwell*, 139 F.

Supp. 3d 240, 265 (D.D.C. 2015) (APA requires disclosure of assumptions critical to the agency’s decision in order to facilitate meaningful comment); *see also Centro Legal de la Raza v. Exec. Off. for Immigr. Review*, 524 F. Supp. 3d 919, 962 (N.D.Cal. 2021). This failure to provide a meaningful opportunity to comment renders the NOPR procedurally invalid.

Moreover, given the sheer number and breadth of the regulations DOE is proposing to sunset, DOE’s 30-day comment period is woefully inadequate and would not allow sufficient time to meaningfully comment on the NOPR even if DOE had provided the information required by law. *See Nat’l Lifeline Ass’n v. Fed. Commc’ns Comm’n*, 921 F.3d 1102, 1117 (D.C. Cir. 2019) (“When substantial rule changes are proposed, a 30-day comment period is generally the *shortest* time period sufficient for interested persons to meaningfully review a proposed rule and provide informed comment.”) (emphasis added).

DOE therefore must withdraw the NOPR in its entirety and issue a new notice of proposed rulemaking that complies with the procedural and substantive requirements of federal law.

B. The Apparent Significance of the Covered Regulations Illustrates the Importance of Robust Notice and Comment Rulemaking Procedure for This Rule

Review of several of the covered regulations identified in the NOPR reveals the glaring problems with DOE’s approach. For example:

- The NOPR proposes to add a one-year conditional sunset date to 10 C.F.R. Part 605, which governs the award and administration of grants and cooperative agreements by the DOE Office of Science (SC) for basic and applied research, educational or training activities, and scientific conferences. This section—which is comprised of 20 separate regulations—covers the issuance of grants, often funding years of research, in important program areas such as basic energy sciences, health and environmental research, and university and science education programs. Yet the NOPR contains no information regarding why DOE is proposing to sunset these regulations, how doing so would be “consistent with applicable law,” or what the impact of sunseting these regulations would be. Moreover, without sufficient explanation from DOE, it is unclear what would happen to the SC and all funding pursuant to these regulations if sunset. DOE does not provide information regarding the status of the SC, whether the funding will still be available through other channels, whether funds will be redirected, or whether existing grantees will be eligible for continued funding. Substantial funding under this program goes to universities, National Laboratories, and other entities in the States. Without an explanation of how sunseting these regulations would affect the underlying program, the States cannot fully evaluate the impact of the NOPR within their borders. These issues and others must be explained in the NOPR so that States and the public can meaningfully engage in the public comment process.
- DOE similarly proposes to add a one-year conditional sunset date to 10 CFR Part 960, which establishes guidelines for the screening of potential sites for a nuclear waste repository. The NOPR contains no analysis or explanation of DOE’s decision to add a conditional sunset date to these regulations, including its intent or what standards will

apply to the screening of potential nuclear waste sites if these regulations are sunset. There are currently no permanent geologic repositories for disposal of nuclear waste anywhere in the nation. Between the projected growth in nuclear energy and the lack of a long-term strategy for a permanent disposal solution, the proposed sunset of these regulations without further explanation is concerning. DOE must provide more information regarding what standards will apply to the screening of potential nuclear waste storage sites if these regulations are sunset. Without further information, the States and the public cannot fully evaluate the impact of the NOPR and meaningfully engage in the public comment process.

- DOE also proposes to add a five-year conditional sunset date to 10 C.F.R. Parts 712, 725, 860, 862, 1016, 1045, and 1046, which sections generally regulate access to nuclear devices and sensitive and restricted information, data, and facilities. DOE’s rationale for adding a five-year sunset date to these regulations rather than a one-year date is that “[t]he identified parts implicate DOE and [National Nuclear Security Administration, or] NNSA abilities to protect DOE and NNSA personnel, facilities, materials, and information. Thus, the Secretary has determined that an extension of the conditional sunset date for these parts for a period of five years is warranted.”⁶ DOE’s own explanation, which indicates that these regulations are important, proves the need for DOE to explain its rationale for adding a conditional sunset date to each of these parts and the impact of doing so. As written, the NOPR provides no information regarding why DOE is adding a conditional sunset date to any of these regulations nor how access to nuclear and sensitive devices, information, and facilities will be regulated, if at all, if these regulations are sunset and become ineffective.

II. DOE Also Must Withdraw the NOPR Because It Is Arbitrary and Capricious

For many of the same reasons discussed above, the NOPR is arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A). In particular, DOE does not explain what the covered regulations do, why they were selected, or why each covered regulation should be sunset, and certainly has not explained each sunset action under statutorily relevant factors. Accordingly, DOE has not “articulate[d] a satisfactory explanation for its action,” and the NOPR is arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also, Kingdom v. Trump*, No. 1-25-cv-00691, 2025 WL 1568238 at *10 (D.D.C. June 3, 2025) (the fact that an agency’s actions were undertaken to fulfill a presidential directive does not constitute reasoned decision-making); *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 514–15 (2009) (an agency changing course, e.g., by rescinding or sunseting properly enacted regulations based on a change in policy, must acknowledge and explain this change.). DOE must withdraw the DFR in its entirety.

⁶ DOE’s explanation for its decision to add a five-year conditional sunset date to these seven parts of the Code of Federal Regulations undermines both the DFR and the NOPR: it is difficult to reconcile DOE’s determination that its regulatory action is truly so routine and insignificant that notice and comment rulemaking is unnecessary and/or that DOE need not provide fundamental information to the public about the basis for and issues considered by DOE in determining which regulations to sunset with this statement suggesting that some of the covered regulations are so important that a five-year conditional sunset date is too short.

III. DOE’S Specific Requests for Comment are Inappropriate and Require Additional Information From DOE to Allow a Meaningful Comment Opportunity

As noted above, DOE requests comment regarding two issues not identified in the DFR: (1) the effects of EPCA’s anti-backsliding provisions; and (2) the costs and benefits of sunseting some of the covered regulations.

Regarding the effects of EPCA’s anti-backsliding provision, it is unclear to the States why this request for comment is included in the NOPR, as it appears to be wholly unrelated to the issues in the NOPR, which seeks to add conditional sunset dates to several hundred existing regulations. As such, the States question the appropriateness of including this request for comment in the NOPR. To the extent it is somehow relevant to the NOPR, inclusion of the request absent any clarifying context further demonstrates the inadequacy of the NOPR—procedurally and substantively—in its failure to explain.

The States interpret DOE’s (again, unexplained) request for comments regarding “the costs and benefits of extending” the conditional sunset of 10 CFR Parts 712, 725, 860, 862, 1016, 1045, and 1046 to seek comments regarding the insertion of a five-year conditional sunset date into these regulations rather than the one-year conditional sunset date proposed for the other covered regulations. 91 Fed. Reg. at 31986. DOE’s rationale for the extended sunset date is that “these parts govern access to classified information/classified programs, administer the Human Reliability Program, protect worker health and safety, and establish processes to govern the production of nuclear material for the personnel at DOE and National Nuclear Security Administration (NNSA) facilities” and therefore “implicate” the agencies’ abilities to “protect personnel, facilities, materials, and information.” *Id.* This request, too, suffers from the same problems as the rest of the NOPR discussed in Section I above: the States cannot provide meaningful comments in the absence of basic information regarding the basis for and impact of the sunset of these regulations, including how sensitive and restricted personnel, facilities, materials and information would be protected if these regulations were sunset.

CONCLUSION

Because DOE has failed to provide adequate notice of its proposed regulatory action, it must withdraw the NOPR in its entirety. If DOE wishes to add conditional sunset dates to regulations issued pursuant to the Atomic Energy Act of 1954, the National Appliance Energy Conservation Act of 1987, the Energy Policy Act of 1992, the Energy Policy Act of 2005, or the Energy Independence and Security Act of 2007, as well as any amendments to any of these statutes, then it should follow the APA’s notice and comment rulemaking procedures and issue a new notice of proposed rulemaking that complies with the procedural and substantive requirements of federal law.

Respectfully submitted,

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