

August 17, 2018

Mr. Edward A. Boling
Associate Director for the National
Environmental Policy Act
Council on Environmental Quality
730 Jackson Place, NW
Washington, D.C. 20503

Re: Update to the Regulations for Implementing the Procedural Provisions of the National
Environmental Policy Act (Docket ID: CEQ-2018-0001)

Dear Mr. Boling:

The Independent Petroleum Association of America (IPAA) submits the following comments regarding CEQ's request for updates to the regulations for implementing procedural provisions of the National Environmental Policy Act (NEPA).

IPAA is the leading, national upstream trade association representing oil and natural gas producers and service companies. IPAA represents thousands of independent oil and natural gas explorers, as well as the service and supply industries that support their efforts. IPAA member companies actively produce oil and natural gas from leases on federal lands, both onshore and offshore.

Since its enactment, requirements involving NEPA have grown considerably and place a heavy burden on independent oil and gas producers operating on federal lands. As more than 40 years of experience with implementing NEPA have demonstrated, overly broad NEPA reviews add unreasonable costs and delays to projects. While the Act has remained unchanged, court decisions, Executive Orders and regulations have defined and significantly expanded the scope of NEPA. We appreciate the opportunity to submit the following suggestions to help improve the process.

1. **Definition of "Major Federal Action" under NEPA**

CEQ should act to further narrow what constitutes a "major federal action" under NEPA as currently defined in 40 C.F.R. 1508.18. The existing process generates duplicative environmental documentation, which creates significant costs for producers and agencies without providing additional protection to the environment or the land. As currently defined, "major federal action" should be narrowed, and CEQ should consider the following revisions:

- Excluding from the definition certain defined categories of small projects for which NEPA review may be contemplated. Many times, an Environmental Impact Statement (EIS) is required for minor maintenance and other activities that can take years to complete.

- Rejecting the "unitary test" and revising 40 C.F.R. 1502.21 to require separate agency analysis for the term "major" as distinct from "significantly."
- Rejecting the expansive definition of "federal" currently used by land managers and require that an action must be primarily "federal" in order to be considered a "major federal action" under NEPA.
- Limit the scope of NEPA decisions and focus the analysis solely on the project seeking approval. Many times, agencies look to collect upstream and downstream data on an oil and gas project that is not relevant to that specific job.
- Create explicit criteria for the use of categorical exclusions as part of the NEPA process. Criteria for the use of categorical exclusions should be outlined, especially for actions which do not have a significant effect on the environment or the land.
- If CEQ revises the term categorical exclusion, it should note in the definition that documentation information is available in a publicly searchable database and that categorical exclusions relied on by agencies shall be available to all agencies for similar actions.

2. Process Delays

A wide array of issues affect time frames for NEPA compliance. In an attempt to respond to relentless court challenges, federal land management agencies continue to exceed NEPA requirements in an effort to create "appeal proof" NEPA documents. Specific time frames for activities as part of an EIS or an Environmental Assessment (EA) should be incorporated into the NEPA process. Expanded use of existing documentation and elimination of duplication in the analyses would also help reduce NEPA time frames. In addition, the land management agencies routinely use an EIS format for EAs, creating unnecessary analysis, delay and expense. Finally, adopting guidance that goes beyond the scope of a specific project imposes additional burdens on land management agencies and producers. Recommendations that would help agencies address these concerns are identified below:

- Project-specific work plans are needed before initiation of the analysis to ensure better coordination between the project proponent and the lead federal agency. Each party should have set objectives and a clear outline of the work product required with respect to data needs, time frames and procedures.
- Many field offices endlessly revise information requirements throughout a NEPA review. Land management agencies need to limit the scope of the review and eliminate analysis of speculative situations, infeasible or uneconomic alternatives.
- Land management agencies often assume that current information in their possession is inadequate or incomplete. Agencies should be required to coordinate with sister agencies and utilize all available existing data in their sister agency files and reports.
- A complete review of the EA process is needed. Congress never envisioned the same level of analysis and public involvement for an EA as compared to an EIS. EAs are intended to be a less complex document that still allow the agencies to make stand-alone decisions for projects.
- Recent guidance from the Department of the Interior for processing environmental reviews, including NEPA compliance, is a positive step and should be included in any subsequent revisions to NEPA regulations.

3. Agency Coordination

The lack of coordination among federal land management agencies in administering NEPA causes significant delays and confusion. Further clarification is needed to address the need for a lead agency with increased authority to oversee efficient coordination and balance varying agency missions. Many land use agencies have chosen to use collaborative decision-making processes when dealing with federal lands. Rather than achieving successful outcomes, these attempts are preventing the agencies from implementing their statutory "multiple-use" mandate. Recommendations that would help agencies address these concerns are identified below:

- Establish a lead federal agency to coordinate the federal environmental review and permitting process. The lead agency should develop a consistent accountability process for responsible management and for ensuring designated NEPA tasks are accomplished in an efficient, cost-effective and timely manner.
- Working in conjunction with the lead agency, all federal agencies should establish mandatory timelines for completing NEPA analysis on a project. Timing delays constitute one of the single most problematic issues facing independent producers operating on federal lands. Every effort should be made to facilitate the reduction of delays in the NEPA process.
- CEQ should promulgate regulations to encourage more consultation with project proponents. Regulatory requirements already provide for a wide spectrum of opportunities for involvement of the general public in the NEPA process. CEQ should increase efforts to engage project experts who can address dynamic technological questions regarding certain projects.
- Agencies should adopt common procedures, data elements and graphic symbols for each resource element to ensure compatibility in data acquisition, analysis and reporting. Data should be easily accessible by each agency for land use management planning, resource stewardship and preparation of NEPA documents.
- Require expanded and improved use of Memoranda of Understanding (MOUs) to facilitate coordinated agency reviews of resource reports and concurrent comment periods.
- Promulgate regulations to make clear which types of future actions are appropriate for consideration under a cumulative impact analysis. Independent oil and natural gas producers rely on "reasonably foreseeable scenarios" as the means to continue exploration and development activities on public lands. These reasonably foreseeable scenarios consider geology and other factors that affect oil and gas exploration and development, such as project economics, technological changes, physical limitations impacting surface access and a variety of other issues. The federal land management agencies should consult with the project proponent and discuss the scenarios periodically to ensure they are still reflective of future activities.

4. Supplemental NEPA Documentation

When a supplement to a NEPA document is deemed necessary, requests for duplicative environmental documentation slows the permitting process to a crawl. Many times, when a

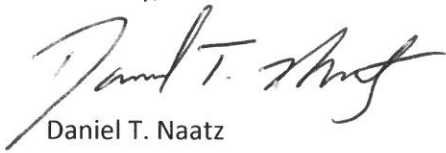
supplement to an EIS or EA is deemed necessary, agencies often choose to initiate a whole new analysis rather than limiting it to the new issues that need to be addressed in the supplemental analysis. This practice is costly and does not achieve the goals established by NEPA.

Recommendations that would help agencies address these concerns are identified below:

- NEPA documents should incorporate all available data to avoid unnecessary research and delays associated with subsequent NEPA analysis. Barring significant changes in resource conditions, any supplemental analysis should focus only on those issues not previously addressed in the programmatic analysis. For smaller projects, a simple checklist should be utilized in place of an EA.
- The applicability of the data used in a supplemental NEPA document should be strictly limited to the area in question. Many times, studies from other parts of the country are used to make decisions involving a project even though conditions are not the same as those addressed in the studies.

Thank you for providing the opportunity to submit comments on ways to improve the NEPA process. IPAA stands ready to work with you to develop solutions that will address the critical challenges of protecting our nation's public lands and at the same time allowing the public to access these areas for multiple use activities.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel T. Naatz", written in a cursive style.

Daniel T. Naatz
Senior Vice President, Government Relations
Independent Petroleum Association of America