



March 6, 2020

Mary Neumayr
Council on Environmental Quality
730 Jackson Place, NW
Washington, D.C. 20503

RE: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (Docket Number: CEQ-2019-0003)

Dear Ms. Neumayr:

The Independent Petroleum Association of America (IPAA) submits the following comments regarding CEQ's Proposed Revisions to the National Environmental Policy Act (NEPA) Implementing Regulations (85 Federal Register 1684).

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 NEPA's enactment, the scope of its requirements and application have grown considerably and place a heavy burden on independent oil and natural gas producers operating on federal lands. While the law itself remains unchanged over the past 50 years, and the regulations have remained virtually untouched for the past 40 years, the courts, Presidential directives and agencies' implementation of the regulations have made NEPA unworkable and far more complicated than the original intent of the law. Modernizing NEPA will help reduce needless delays that hinder American oil and natural gas projects and badly needed infrastructure initiatives across the nation.

CEQ's proposed changes make critically needed revisions to NEPA's implementing regulations. These common-sense revisions are long overdue and vitally important. NEPA was signed into law by President Nixon in 1970. Modernizing NEPA will benefit the economy, the environment and untangle delays that have been hindering needed investment in energy projects around the nation.

The Trump Administration's efforts to modernize NEPA will also spur key efficiency efforts that will actually enhance environmental protection. A wide array of issues affect timeframes for complying with NEPA. In an attempt to respond to relentless court challenges, federal land management agencies endlessly revise information requirements throughout the NEPA review process. Instead of working with the users of public lands to implement reasonable environmental stewardship and conservation efforts, the federal land managers get caught in a "paper chase" to create "appeal proof" NEPA documents. This is not only highly inefficient, but hampers efforts to find innovative solutions to protect the environment, unlock investments, and create jobs.

Our organization also applauds the Trump Administration for taking action to improve agency coordination when administering NEPA. The lack of coordination among federal land management agencies, for example the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS), when implementing NEPA causes significant delays and confusion. Many land management agencies chose to use collaborative decision-making processes when dealing with federal land use activities. Rather than achieving successful outcomes, these attempts are preventing the agencies from making timely decisions. CEQ's proposed changes to condense the interagency review process and designate a lead agency for NEPA reviews is long overdue and enthusiastically welcomed.

IPAA and our members who operate on federal lands across the United States commend the Trump Administration for proposing innovative changes to NEPA. We stand ready to work with the federal government to find 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.

We specifically would like to highlight the following issues in the proposed regulation that are important to IPAA's members.

Section 1500

- **1500.3 (b) – Exhaustion**

IPAA supports the proposed revisions to 1500.3 (b) outlined in the implementing regulations, including the proposal that federal agencies summarize public comments in an environmental impact statement (EIS).

IPAA generally supports the proposal in section 1500.3 (b)(3) that comments be submitted within comment periods. IPAA requests, however, that CEQ modify this provision to afford agencies the flexibility to consider information submitted outside of public comment periods when new issues or information arise after the close of comment periods. Project proponents often seek to provide agencies with scientific information or other information relevant to the agencies' environmental analysis or decision throughout the NEPA process, and section 1500.3 (b)(3) should not preclude agencies from considering such information.

Additionally, IPAA supports CEQ's proposal to codify the long-standing judicial and administrative principle that issues that were not raised in the public comment periods are deemed unexhausted and forfeited. Although many agencies have independently adopted this rule, *see, e.g.*, 43 C.F.R. § 4.410(c) (limiting appealable issues before the Interior Board of Land Appeals to those raised by a party in prior participation), and courts enforce a similar doctrine, *see Nebraska v. E.P.A.*, 331 F.3d 995, 997 (D.C. Cir. 2003) ("Absent special circumstance, the party must initially present its comments to the agency during the rulemaking in order for the court to consider the issue."), incorporating this principle into CEQ's regulations reinforces the need for public participation early in the NEPA process.

Finally, IPAA requests that CEQ revise the statement in 1500.3 (b)(3) that "[a]ny objections to the submitted alternatives, information, and analysis section (§ 1502.17) shall be submitted within 30 days of the notice of availability of the final environmental impact statement." This language allows members of the public to wait until final stages of the NEPA process—publication of the final EIS—to submit objections to the information presented therein. The regulations should encourage the public to present information and raise objections as early in

the NEPA process as possible. CEQ should revise this regulation to allow objections to alternatives, information, and analysis in final EISs only when the objections could not have been raised earlier in the process or the commenter maintains that the agency did not adequately address objections that were previously raised.

- 1500.3 (c) – Actions Regarding NEPA Compliance
IPAA supports the proposal to allow agencies to impose a bond or other security requirement as a condition for a stay pending administrative or judicial review. IPAA requests, however, that CEQ clarify in the final rule that any bond or security requirement must accompany a substantive demonstration of error and harm (such as the requirements to obtain a preliminary injunction, see *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7 (2008)) to stay an agency decision pending review.
- 1500.3 (d) – Remedies
IPAA requests that CEQ incorporate into section 1500.3 (d) a preference that, if an agency is found not to have fully complied with NEPA prior to approving an action, the agency be allowed to correct the NEPA deficiency without vacatur of the approval. To the extent a project proponent or private entity relies on an agency's approval or decision, vacatur or invalidation of that decision due to a procedural error can result in serious uncertainty. For example, if a court found that the BLM did not fully meet NEPA's procedural obligations when issuing a federal oil and gas lease, the BLM should be permitted to suspend, rather than rescind or cancel, the oil and gas lease and correct its NEPA analysis. Otherwise, if the BLM rescinded or cancelled the lease, the lessee would entirely lose its rights to the lease and would have to compete for the lease again via competitive auction. To minimize uncertainty among private entities that rely on federal agency approvals, CEQ should revise section 1500.3 (d) to articulate a preference that agencies be allowed to correct NEPA deficiencies without vacatur of the agency decision.
- 1500.3 (e) – Severability
We support the new language regarding "severability" contained in the implementing regulations. If any section or portions of these regulations are stayed or invalidated, it should have no bearing on the validity of the remaining sections.

Section 1501

- 1501.1 – NEPA Threshold Applicability Analysis
IPAA supports CEQ's proposal to establish a NEPA threshold applicability analysis. We support all efforts to provide better clarity for the land management agencies and regulated entities to determine if NEPA applies. Project-specific work plans should also be initiated to better ensure coordination between the project proponent and the lead federal agency. The federal agencies should have a well-defined outline of whether proposed actions require analysis under NEPA and the proper steps moving forward.

IPAA particularly supports the proposal in section 1501.1 (a)(1) to establish, as an initial threshold of NEPA applicability, that an action be "major federal action" as defined in section 1508.1. We request that CEQ clarify that, if an action is not a "major federal action," no analysis or further action is required by NEPA. Although section 1501.1 (a)(1) implies this result, CEQ should explicitly confirm it to avoid confusion within agencies.

IPAA also supports the proposed criteria in 1501.1 (a)(2)–(5), which codify court decisions addressing the types of actions to which NEPA does not apply. First, courts have held that NEPA does not apply to nondiscretionary federal actions. *See, e.g., Alaska Wilderness League v. Jewell*, 788 F.3d 1212, 1225–26 (9th Cir. 2015) (finding that agency was not required to analyze nondiscretionary action under NEPA); *accord Minnesota v. Block*, 660 F.2d 1240, 1259 (8th Cir. 1981) (“Because the Secretary has no discretion to act, no purpose can be served by requiring him to prepare an EIS, which is designed to insure that decisionmakers fully consider the environmental impact of a contemplated action.”); *Sierra Club v. Hodel*, 848 F.2d 1068, 1089 (10th Cir.1988) (“The EIS process is supposed to inform the decision-maker. This presupposes he has judgment to exercise. Cases finding ‘federal’ action emphasize authority to exercise discretion over the outcome.”). Second, courts have held that NEPA does not apply when it conflicts with the requirements of another statute or would be inconsistent with congressional intent due to the requirements of another statute. *See, e.g., Flint Ridge Dev. Co. v. Scenic Rivers Ass’n of Oklahoma*, 426 U.S. 776 (1976) (holding that statutory requirement that agency complete review of subdivision within 30 days precluded preparation of EIS); *accord Grand Council of Crees (of Quebec) v. F.E.R.C.*, 198 F.3d 950 (D.C. Cir. 2000); *Merrell v. Thomas*, 807 F.2d 776 (9th Cir. 1986); *Natural Res. Defense Council, Inc. v. Berklund*, 609 F.2d 553 (D.C. Cir. 1979); *Milo Cmty. Hosp. v. Weinberger*, 525 F.2d 144 (1st Cir. 1975). Finally, courts have held that an agency action does not require NEPA review when other analyses of the action are the functional equivalent of a NEPA analysis. *See, e.g., Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973).

- 1501.3 – Determine the Appropriate Level of NEPA Review

Establishing a clear decisional framework for agencies to assess their proposed actions is essential to improving NEPA. The existing process generates duplicative documentation and creates significant costs, uncertainty, and financial burdens for producers and agencies. IPAA supports all efforts to provide improved clarity regarding what agencies should consider in assessing the environmental effects of a proposed project.

IPAA particularly supports inclusion of 1501.3 (a)(1), which directs agencies to consider whether a categorical exclusion (CE) applies to a particular action. Agencies are often reluctant to utilize CEs, even when one or more apply to a federal action, leading to unnecessary analysis and process. For example, the BLM has issued guidance specifically to encourage agencies to utilize CEs when available. *See* BLM Information Bulletin No. 2018-061 (June 6, 2018). We support any effort by CEQ to urge agencies to apply CEs when they apply.

IPAA requests that CEQ delete from section 1501.3 (b)(1) the statement that “[b]oth short-term and long-term effects are relevant” to the assessment of whether effects are significant. This statement is inconsistent with the language in section 1508.1 (g)(2) that effects are not significant if they are “remote in time.”

- 1501.4 – Categorical Exclusions

We strongly support language outlined in the regulations that propose to add a new section on “Categorical Exclusions” that would address in more detail the process by which an agency considers whether a proposed action is categorically excluded under NEPA. Creating explicit criteria for the use of a CE is an integral part of NEPA modernization. IPAA encourages CEQ to

further refine this section and exclude from the definition of a CE certain defined categories of small projects for which any type of NEPA review is contemplated.

We support inclusion of proposed section 1501.4 (b)(1), which allows an agency to utilize a categorical exclusion when extraordinary circumstances exist but mitigating circumstances or other conditions will avoid significant effects. This provision promotes agency flexibility by allowing use of a categorical exclusion without risking significant environment impacts.

- 1501.5 – Environmental Assessments (EA)

IPAA is pleased with the proposal to establish a presumptive page and time limit for environmental assessments. We also applaud the agency for encouraging agencies to write all NEPA environmental documents in plain language with a clear format. As outlined in the proposal, modern technology should help facilitate collaborative EA preparation and allow agencies to define the scope and the content of the EA. All efforts should be made to work with producers and incorporate data, inventories, and other pertinent information so decisions can be made in a reasonable manner. We agree that vague, voluminous environmental documents do little to improve the quality of NEPA documents and certainly do nothing to help protect the environment.

IPAA requests that CEQ include statements in section 1501.5 recognizing that “an agency’s obligation to consider alternatives under an EA is a lesser one than under an EIS” and, further, and that an EA may reasonably analyze only an action and no-action alternative. *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1246 (9th Cir. 2005). A variety of courts have confirmed this result. *See id.*; *Mt. Lookout—Mt. Nebo Prop. Prot. Ass’n v. Fed. Energy Regulatory Comm’n*, 143 F.3d 165, 172 (4th Cir.1998) (“The rigor with which an agency must consider alternatives is greater when the agency determines that an EIS is required for a particular federal action.”); *Sierra Club v. Espy*, 38 F.3d 792, 803 (5th Cir.1994) (same); *Friends of the Ompompanoosuc v. Fed. Energy Regulatory Comm’n*, 968 F.2d 1549, 1558 (2d Cir.1992) (same). Accordingly, courts have accepted EAs that consider only an action and no-action alternative. *See id.* CEQ should expressly incorporate these judicial holdings into its regulations.

- 1501.7/8 – Lead and Cooperating Agencies

The lack of coordination among federal land management agencies in administering NEPA causes significant delays and confusion. We commend CEQ for providing further clarity for the lead and cooperating agencies. However, further clarification is needed to address the need for a lead agency to oversee efficient coordination and to balance vying agency missions. Although IPAA supports language in section 1501.8 that provide for states, localities, and tribes to be included as cooperating agencies, the language should be better defined and outline the parameters in which these entities will be engaged.

Furthermore, section 1501.8 (b) should expressly encourage lead agencies to invite participation of interested federal, state, tribal, and local agencies and government as early in the NEPA process as possible. These entities sometimes do not engage in NEPA processes as cooperating agencies until the NEPA process is well underway (and sometimes as late as after a draft EIS is released). This late participation only delays the overall process while the lead agency attempts to consider and respond to the cooperating agency’s views.

We also encourage the expanded use of Memoranda of Understanding (MOUs) to help facilitate coordinated agency reviews of resource reports and comment periods. We request that CEQ incorporate a provision into section 1501.8 encouraging agencies to execute MOUs with cooperating agencies.

Finally, CEQ should explicitly incorporate a provision into 1501.8 (b) requiring agencies to consult with project proponents who are cooperating agencies. Often project proponents can identify a variety of factors that will affect proposed actions and their effects. For example, with respect to oil and gas exploration and development, project economics, technological changes, physical limitations impacting surface access and a variety of other issues will affect a proposed action, alternatives, and potential effects. Federal agencies should engage with project proponents to ensure alternatives are technically and economically feasible and to ensure that effects are reasonably foreseeable.

- 1501.10 – Time Limits

IPAA strongly supports language in the implementing regulations calling for time limits for EAs and EISs. Timing delays constitute one of the single most problematic issues facing independent oil and natural gas producers operating on federal lands. Recent EISs for oil and gas development projects on federal lands have taken six to nine years to complete. During this long time, conditions can change – projects can become uneconomic, the technology used to develop a project can improve, environmental analysis can become stale, and environmental conditions can change. These changes can cause the need for even more environmental analysis and possibly abandonment of an entire project. A presumptive time limit of one year for an EA and two years for completion of an EIS is workable, reasonable and should provide adequate time for the agencies to complete their NEPA analysis, particularly after accounting for CEQ's other proposed changes to streamline NEPA processes.

- 1501.11 – Tiering

IPAA supports language in the implementing regulations calling for expanded use of existing documentation and elimination of duplication when agencies undertake a NEPA review. The BLM and the USFS frequently request duplicative and redundant environmental documentation during the leasing process for oil and natural gas projects on federal lands. Language directing the agencies to use existing studies and environmental documentation will reduce NEPA timeframes and is strongly endorsed.

Section 1502

- 1502.7 – Page Limits

IPAA has long advocated placing a page limit for NEPA documents. IPAA agrees with the presumptive page limits proposed in 1502.7 because agencies should be able to complete an EIS for a standard project in 150 pages or less. Although we understand the need for senior agency officials to have the ability to approve longer documents, we are concerned limiting deviation decisions to the Assistant Secretary level, as defined in proposed section 1508.1 (dd), could result in unnecessary backlogs. IPAA instead proposes that CEQ allow agencies flexibility to identify the “senior agency official” to approve deviations in length of EISs or allow Assistant Secretaries to delegate the authority to approve deviations in length of EISs.

- 1502.9 – Supplemental Statements

When a supplement to a NEPA document is deemed necessary and is still deemed as a major federal action, 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. IPAA commends the CEQ for addressing these issues in 1502.9. Further, IPAA requests that CEQ clarify in the final rule that, barring significant changes in resources conditions, any supplemental analysis should focus only on those issues not addressed in the prior analysis.

- 1502.13 – Purpose and Need

IPAA supports CEQ's proposal to require agencies to base their purpose and need for an action on an applicant's goals, as well as the agency's authority, when reviewing an application for authorization. At least one court has upheld an agency regulation that similarly directed the agency to look to an applicant's purpose and need. See *City of Angood v. Hodel*, 6060 F.3d 1058, 1021 (9th Cir. 2010) (citing 33 C.F.R. pt. 230, App. B(11)(b)(4)-(5) (1985), which stated that "every application has both an applicant's purpose and need and a public purpose and need" and specified that an EIS must document alternatives "which would satisfy the purpose and need . . . for which the applicant has submitted his proposal").

Because the purpose and need for an action determines the scope of reasonable alternatives analyzed in a NEPA document, an agency can expand a private applicant's proposal in a manner inconsistent with the applicant's objectives by redefining the purpose and need for the action. For example, the BLM's NEPA regulations allow the BLM to alter the purpose and need for a project to suit the agency's objectives rather than the proponents. They describe an applicant's purpose and need merely as "background information" and direct that the BLM's purpose and need will "determine the range of alternatives and provide a basis for the selection of an alternative in a decision." 43 C.F.R. § 46.420(a)(2). These competing goals can create tension for project applicants. For example, when an oil and gas operator seeks approval of a project, the oil and gas operator has analyzed how to most economically maximize recovery of the oil and gas resource and, as a result, often cannot adjust the proposal, for example, to accommodate emerging technologies or different well configuration or design. Yet, an agency may attempt to craft alternatives with these adjustments to account for its own purpose and need. For these reasons, IPAA supports the proposal to align an agency's stated purpose and need with the goals of project applicants.

- 1502.14 – Alternatives

IPAA supports CEQ's proposed language confirming that agencies need only analyze "reasonable alternatives" to a proposed action. This change, together with the definition of "reasonable alternatives" in 1508.1 (z), aligns CEQ's regulations with existing case law addressing the alternatives an agency must consider in an EIS or EA. In addition, we strongly endorse CEQ's proposal to eliminate paragraph (c) of the current 40 C.F.R. § 1502.14, which requires agencies to analyze alternatives outside of the lead agency's jurisdiction.

CEQ should clarify that the provision in proposed section 1502.14 (e), which requires that agencies analyze mitigation in an EIS's discussion of alternatives, does not allow agencies to analyze mitigation that they lack the authority to require. For example, the BLM lacks authority under the Federal Land Policy and Management Act to require compensatory mitigation from public lands users. See Instruction Memorandum No. 2019-018 (Dec. 6, 2018). As a result,

proposed 1502.14(e) should not be construed as allowing or requiring the BLM to analyze compensatory mitigation in alternatives to a private applicant's proposed action. IPAA requests that CEQ revise proposed 1502.14(e) to make this clarification.

- 1502.15/16 – Affected Environment and Environmental Consequences
IPAA supports language in proposed sections 1502.15 and 1502.16(a)(1) outlining that NEPA analysis should be limited to the affected environment and focus only on aspects of the environment impacted by the proposed action. Many times, federal land management agencies collect upstream and downstream data on an oil and natural gas project that is not relevant to a specific environmental impact.

When the BLM prepares, amends, or revises resource management plans, it prepares “reasonably foreseeable development scenarios” to estimate the foreseeable level of exploration and development activities on the public lands and their associated impacts. See BLM Handbook H-1624-1, Planning for Fluid Mineral Resources, at III-7 (Rel. 1-1580 May 7, 1990). These reasonably foreseeable development 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.

- 1502.24 – Methodology and Scientific Accuracy
We support revisions outlined in section 1502.24 and believe agencies should use reliable existing information when complying with NEPA. IPAA further encourages CEQ to require agencies to adopt common procedures, data elements, and graphic symbols for each resource element to ensure compatibility in data acquisition, analysis, and reporting.

Additionally, IPAA requests that, in the preamble to the final rule, CEQ clarify what constitutes “new scientific and technical research” that agencies are not required to undertake pursuant to section 1502.24. For example, agencies frequently prepare complex photochemical modeling to predict air quality impacts associated with a proposed action. CEQ should clarify whether such modeling would constitute “new scientific or technical research” under section 1502.24.

Section 1506

- 1506.1 – Limitations on Action During the NEPA Process
IPAA supports efforts to improve the NEPA process by clarifying the actions that agencies and applicants may and may not take during the preparation of an EA and an EIS.
- 1506.2 – Elimination of Duplication with State, Tribal and Local Procedures
IPAA supports the reduction in duplicative and redundant environmental analysis by federal agencies and state, tribal, and local agencies. As stated earlier, we commend CEQ for providing further clarity for the lead and cooperating agencies and including state, tribes and localities in the NEPA evaluation process. In addition, we also applaud CEQ for encouraging agencies to utilize existing and prior reviews and decisions. Although IPAA supports language in the implementing regulations that provide for states, localities, and tribes to be included as

cooperating agencies, the language should be better defined and outline the parameters in which these entities will be engaged.

- 1506.4 – Combining Documents

We support all efforts to encourage agencies to combine environmental documents with other agency documents to reduce duplication and paperwork. We urge CEQ to further clarify the language in proposed section 1506.4 to require that documentation information is available in a publicly searchable database so that agencies can communicate and coordinate with one another.

- 1506.5 – Agency Responsibility for Environmental Documents

IPAA applauds CEQ for proposing to allow project applicants to prepare EISs under the direction of the lead agency. This proposal would reduce the time and cost to prepare EISs, while reducing the burdens on lead agencies. Proponents currently have little control over the cost of EISs, which are often over \$1 million. Allowing proponents to prepare their own NEPA documents would afford them the opportunity to control costs.

Further, this proposal would promote communication between federal agencies and project proponents. Currently, project applicants can have little meaningful contact with federal agencies regarding EISs because federal agencies often contract EIS preparation with third parties and limit project proponents' communications with these third parties. Allowing project proponents to prepare EISs under the direction of the lead agency would encourage more direct communication between the two and foster a more meaningful dialogue about proposals.

Section 1508

- Effects

IPAA strongly supports CEQ's language clarifying the meaning of "effects" in the NEPA regulations. By striking the terms "direct," "indirect" and "cumulative," federal agencies will be better able to determine whether effects are significant by focusing on those effects that have a reasonably close causal relationship to the federal action. The current language creates confusion for our members and leads to frequent litigation. Additionally, by striking references to "direct," "indirect," and "cumulative" effects, the agency aligns the definition of "effects" with the Supreme Court's interpretation in *Department of Transportation v. Public Citizen*, 451 U.S. 752 (2003), and *Metropolitan Edison Co. v. PANE*, 460 U.S. 766 (1983).

The revised definition will also allow the agencies to focus on consideration of effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternative. Limiting the scope of NEPA decisions and better focusing the analysis solely on the project seeking approval will help alleviate delays and costs for both independent producers and the agencies.

IPAA particularly commends CEQ for striking the requirement that agencies analyze "cumulative" impacts. The requirement in the current 40 C.F.R. § 1508.7 that agencies analyze the incremental impact of an agency action when added to other past, present, and reasonably foreseeable future actions (federal or non-federal) results in incomplete analysis, is redundant, and is inconsistent with the Supreme Court's interpretation of NEPA. The requirement results in

incomplete analysis because agencies often lack information about the impacts of non-federal actions (whether past, present, and reasonably foreseeable future actions) because these non-federal actions often are authorized without environmental review. The requirement also is redundant because, to the extent agencies can determine the impacts of past and present federal and non-federal actions, these impacts are captured in the environmental baseline analyzed as part of the no-action alternative. Finally, this requirement is inconsistent with the Supreme Court's interpretation of NEPA because the impacts of past, present, and reasonably foreseeable future actions lack any causal relationship to the agency action under review. See *Dep't of Transp. v. Pub. Citizen*, 451 U.S. 752, 767 (2003).

Furthermore, IPAA supports CEQ's codification of the judicial principle that a "but for" causal relationship is inadequate to make an agency responsible for analyzing effects under NEPA. This clarification is consistent with the Supreme Court's holding in *Department of Transportation v. Public Citizen*, 451 U.S. 752, 767-68 (2003). Similarly, we strongly endorse provisions that limit the federal agency's NEPA review obligations to effects from actions within its jurisdiction, consistent with *Public Citizen*.

Finally, IPAA recommends that CEQ consider revising the following statement: "Effects should not be considered significant if they are remote in time, geographically remote, or the product of a lengthy causal chain" (emphasis added) IPAA maintains that such effects are not "reasonably foreseeable" as defined in proposed section 1508.1 (aa) and therefore need not be considered in environmental analysis at all. Alternatively, if CEQ seeks to clarify that agencies should consider such effects but should not consider them to be "significant," IPAA suggests that CEQ move this statement out of the definition of "effects" and into the evaluation of whether an effect is significant in section 1501.3 (b).

- *Major Federal Action*

We applaud CEQ for interpreting the term "major federal action" independently from those federal actions with significant impacts. This interpretation aligns the regulations with the express language of NEPA, which uses "major federal action" and "significantly" as distinct terms. See 40 U.S.C. § 4332(C). Moreover, we agree that, to be a "major federal action" triggering a NEPA evaluation, an action must be primarily in the jurisdiction of the federal government. CEQ should expressly recognize that, if an action is not a "major federal action," NEPA does not require any analysis of the action's environmental impacts.

We also commend CEQ for outlining that NEPA does not require review of actions with minimal federal involvement or funding. However, IPAA disagrees with the statement in section 1508.1(q)(2)(iv) that "major federal action" includes permit approvals. Often, the BLM will be asked to approve a drilling permit to develop one federal oil and gas lease; however, the oil and gas well will predominantly develop non-federal minerals, with the federal oil and gas lease comprising only a small portion of the mineral development. IPAA maintains that such action does not constitute a "major federal action" requiring analysis under NEPA because of the minimal federal involvement. Accordingly, IPAA requests that CEQ revise section 1508.1(q)(2)(iv) to recognize that not all permit approvals constitute "major federal actions." Further, IPAA requests that CEQ recognize that, in some cases, approvals of permits to develop federal oil and gas leases may not constitute "major federal actions" when the well at issue will predominantly develop non-federal minerals.

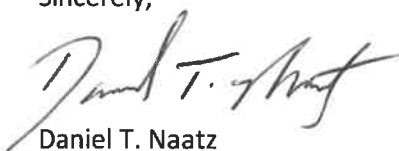
- Mitigation
IPAA requests that CEQ confirm that, although the term “mitigation” is defined to include five forms of mitigation, *see* proposed section 1508.1(s)(1)–(5), an agency need not analyze all five forms in a given NEPA document.
- Reasonable Alternatives
IPAA supports the revised definition of “reasonable alternatives” under NEPA. IPAA particularly commends CEQ for including in this definition a requirement that alternatives be technically and economically feasible. Although CEQ has long interpreted “reasonable alternatives” to include only those that are technically and economically feasible, *see* Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg. 18026 (Mar. 23, 1981), codification of this interpretation reinforces it for agencies.

Similarly, IPAA supports CEQ’s proposal to define “reasonable alternatives” to require consideration of an applicant’s goals. As IPAA explained in its comment on proposed section 1502.13, agencies sometimes consider alternatives that are inconsistent with the applicant’s objectives. For example, when an oil and gas operator seeks approval of a project, the oil and gas operator has analyzed how to most economically maximize recovery of the oil and gas resource. As a result, an operator often cannot adjust its proposal, for example, to accommodate emerging technologies or different well configuration or design. Nonetheless, agencies will consider alternatives that change the nature, location, or timing of proposed actions in a manner that is inconsistent with the applicant’s goals and potentially infeasible or uneconomic. Accordingly, IPAA supports the proposal to require that reasonable alternatives consider the goals of the project applicant.

- Reasonably Foreseeable
We support the language included in the implementing regulations that better defines “reasonably foreseeable” in NEPA. We believe it is important to apply the “ordinary person” standard regarding what a person of ordinary prudence would expect to occur.

Thank you for providing the opportunity to submit these comments. IPAA welcomes these proposed changes and is ready to work with the Trump Administration and the federal regulatory agencies to find solutions that improve our infrastructure and better protect the environment.

Sincerely,



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