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Docket ID No. CEQ-2025-0002

Katherine R. Scarlett
Chief of Staff
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Re: Interim Final Rule, Council on Environmental Quality; Removal of National Environmental Policy Act Implementing Regulations (90 Fed. Reg. 10610, February 25, 2025)

Dear Ms. Scarlett:

The undersigned associations (collectively, the "Coalition") offer the following comments in response to the Council on Environmental Quality's ("CEQ's") Interim Final Rule, Removal of National Environmental Policy Act ("NEPA") Implementing Regulations ("IFR").[1]

I. Executive Summary

Our organizations represent a diverse set of businesses and industries that provide innovative products and services for the public and the American economy. We represent businesses in agriculture, energy, construction, mining, forestry, manufacturing, transportation, and other sectors. An efficient federal permitting system is one that is consistent with the text of the NEPA statute and is essential for making timely investments to meet a wide array of critical needs. Accordingly, we welcome the Trump Administration's efforts to streamline environmental reviews under NEPA as outlined in President Trump's Executive Order, Unleashing American Energy.[2] The decision to prioritize efficiency, certainty, and accuracy has the potential to benefit all sectors of the American economy.

We support the goals of NEPA to inform federal decision-making and the public's understanding of the potential environmental impacts of federal actions. NEPA is, at its core, a procedural statute designed to integrate environmental analyses into federal decision-making. However, the NEPA process we have today has become overly complex, slow, and burdensome without yielding corresponding benefits for the federal decision-making process. In the Fiscal Responsibility Act ("FRA"), Congress amended NEPA and took the first steps towards the development of a coherent and concise environmental review process.[3] This administration's ongoing efforts are essential to harnessing those process improvements and reining in excessive processes.

The business community represented by the Coalition has a long history of engagement in the development of NEPA regulations and guidance. We consistently advocate for an efficient and transparent federal permitting process, coupled with appropriate, effective, and meaningful disclosure

[1] 90 Fed. Reg. 10610 (Feb. 25, 2025).
[2] Executive Order 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 29, 2025).
[3] Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10, 38 (2023).

and understanding of environmental impacts, consistent with federal law. Three key principles should guide the efforts of CEQ and of agencies revising their NEPA procedures consistent with the IFR: predictability, efficiency, and transparency.

Predictability is critical to project developers and financers who need consistent analysis and an appropriate level of certainty regarding the scope and timeline for project reviews. Relevant regulations and guidance should be legally sound, practical, and durable. Efficiency is essential. Ways to improve efficiency include effective senior level management, enough trained and experienced staff, and interagency coordination. This will optimize public and private resources to support better process and outcomes. CEQ may also consider developing templates for agency NEPA regulations to provide continuity in the approach to environmental review across agencies. Transparency is crucial for private sector development and public participation, and visibility into timelines for NEPA review will increase transparency surrounding the permitting process. Utilization of dashboards or other means of showing progress and status of a review are helpful transparency tools.

The IFR and accompanying February 19, 2025, Memorandum on Implementation of the National Environmental Policy Act ("February 19 Guidance"),[4] present an opportunity for CEQ to focus agencies' attention on implementing NEPA, as amended by the FRA. The IFR correctly recognizes that CEQ has authority to take on a strong advisory role to ensure efficient implementation of NEPA and promote uniform analysis among agencies. As summarized below, the Coalition's comments seek to further these principles by recommending CEQ take the following steps regarding the IFR:

- CEQ should guide agencies to adopt NEPA procedures that are consistent with the text of the statute and unambiguously reflect NEPA's procedural role.
- CEQ should guide agencies to ensure that agencies continue NEPA reviews without delay using existing authorities and guidance. Consistent with CEQ's February 19 Guidance, agencies should look to the Unleashing American Energy Executive Order and: (1) their specific substantive statute, (2) the text of NEPA, (3) any existing agency-specific NEPA procedures that the agency deems consistent with the text of NEPA, and (4) to the extent there are outstanding questions regarding NEPA compliance, the CEQ regulations as non-binding guidance.[5]
- CEQ should guide agencies to adhere to all requirements established by the FRA, including requirements concerning deadlines and page limits.
- CEQ should guide agencies to expand available Categorical Exclusions and rely on programmatic review options and tiering to reduce unnecessary red tape for review of proposed actions when appropriate.
- Consistent with case law, CEQ should guide agencies to include the assessment of only the causally related "reasonably foreseeable environmental effects of the proposed agency action,"[6]

[4] *See* Council on Environmental Quality, Katherine R. Scarlett Memorandum on Implementation of the National Environmental Policy Act (Feb. 19, 2025).

[5] To the extent agencies reach the final step, the Coalition suggests CEQ advise agencies to look to the 2020 version of the CEQ regulations. *See* CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43304 (Jul. 16, 2020) ("2020 NEPA Rule"). While certain portions of the 2020 regulations are not directly authorized by the text of NEPA, this version of the regulations is more closely tied to the text of NEPA than the most recent version of the regulations.

[6] 42 U.S.C. § 4332(C)(i).

which should be limited in scope to the environmental effects covered by the agencies' specific statutory authorities. Thus, agencies should avoid needlessly spending time and resources examining speculative or tenuous environmental effects far removed from the agency action at issue.

- Consistent with the plain language of NEPA, CEQ should guide agencies to analyze reasonably foreseeable effects without categorizing them as direct, indirect, and cumulative effects.

- CEQ should guide agencies to adopt requirements for a narrowly tailored, clearly defined purpose and need statement and alternatives analysis that reflect the applicant's goals and the agency's statutory authority.

- CEQ should encourage agencies to ensure they have adequate staffing to undertake NEPA reviews.

Through implementation of the IFR and the February 19 Guidance, CEQ can shepherd federal agencies through the process of revising their NEPA procedures with these principles front of mind. By providing strong oversight of proposed revisions to agency NEPA procedures, CEQ can foster the development of a more efficient, consistent environmental review process across the federal government that provides the Coalition's members with increased certainty around project permitting. CEQ's role in this effort is critical to ensure the consistency and durability of agency NEPA procedures.

II. Comments of the Coalition

a. CEQ Should Encourage Agencies To Adopt NEPA Procedures That Are Consistent With The Text Of NEPA And Reflect NEPA's Procedural Role.

Two fundamental principles are reflected in Section 102 of NEPA: (1) the statute requires agencies to analyze the environmental consequences of their actions;[7] and (2) "NEPA itself does not mandate particular results, but simply describes the necessary process."[8] As the IFR appropriately recognizes, "NEPA does not mandate particular results or substantive outcomes" but instead "requires Federal agencies to consider the environmental effects of proposed actions as part of agencies' decision-making processes."[9] This reinforces that NEPA is a procedural statute that sets out a process for analyzing environmental impacts. Accordingly, CEQ should provide guidance to ensure that agencies focus on NEPA's process requirements and do not create NEPA procedures that impose substantive requirements or drive particular policy outcomes.

CEQ should promote agency procedures that are standardized and align with the text of NEPA, as amended by the FRA. As agencies develop their procedures, they should consider what NEPA itself requires versus what previous CEQ regulations, agency regulations, or case law interpreting CEQ or agency regulations require. CEQ should encourage agencies to align their procedures with the text of NEPA subject to the guiding principles of predictability, efficiency and transparency. For example, although CEQ's 2024 Phase 2 rule encouraged agencies to incorporate mitigation measures addressing a proposed

[7] *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (quoting *Cady v. Morton*, 458 F.2d 786, 838 (9th Cir. 1975)).
[8] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).
[9] 90 Fed. Reg. at 10611.

action's environmental effects, NEPA does not give agencies authority to require mitigation measures.[10] Although project developers should retain the ability to voluntarily offer mitigation to reduce impacts of their projects federal agencies should not require mitigation measures as part of their NEPA analyses unless another applicable statute requires mitigation.

Moreover, courts have long held that in some cases, NEPA does not apply at all to a proposed activity, and that in other cases, NEPA is satisfied through another mechanism.[11] The FRA NEPA amendments provided further clarity by defining "major Federal action" requiring NEPA review as an action "subject to *substantial* Federal control and responsibility."[12] Previously, NEPA had no statutory definitions. With the FRA amendments, a narrower definition than the prior regulatory definition of "major Federal action" was codified, adding a direct requirement for "substantial" Federal control and responsibility.[13] The amendments further specified certain actions that are *not* major Federal actions, including actions "with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project."[14] Agencies should look to the amended language of the statute itself when adopting procedures to determine whether an action is a "major Federal action" and therefore potentially subject to NEPA.

For example, the 2020 NEPA Regulations removed loans and loan guarantees, such as those received from the Farm Service Agency at the U.S. Department of Agriculture, from the definition of "major Federal action," recognizing that agencies may not exercise sufficient control and responsibility over the effects of these actions.[15] This is now reflected in NEPA as amended by the FRA, which excludes from the definition of "major Federal action" this type of financial assistance where a federal agency does not have sufficient "control and responsibility" over "subsequent use" of the assistance or the "effect of the action."

Adequate agency staffing is also key to ensuring that NEPA's requirements are carried out consistent with the statute and that NEPA review is undertaken in a fast and efficient manner. Accordingly, CEQ should

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[10] The Supreme Court agreed with this position in *Methow Valley*, 490 U.S. at 353 n. 16 ("NEPA imposes no substantive requirement that mitigation measures actually be taken."); *see also* CEQ, National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35442, 35505, 35516-19 (May 1, 2024).

[11] *See, e.g., Nat'l Wildlife Fed'n* v. *Sec'y of the U.S. Dep't. of Transp.,* 960 F.3d 872, 879-80 (6th Cir. 2020) (finding that NEPA was not applicable because the action at issue was not a "major Federal action," as EPA lacked discretion to deny oil spill response plans submitted to the agency); *W. Neb. Res. Council v. U.S. EPA*, 943 F.2d 867, 871-72 (8th Cir. 1991) (finding that NEPA review was not required because the procedures of the Safe Drinking Water Act were functionally equivalent).

[12] 42 U.S.C. § 4336e(10)(A). (emphasis added). The new definition of "major Federal action" makes clear that an agency's determination of whether an action is a major Federal action is a separate and independent consideration from its determination of the significance of effects.

[13] The 2020 CEQ NEPA regulations defined major Federal action to mean "an activity or decision subject to Federal control and responsibility…." 40 C.F.R. § 1508.1(q).

[14] 42 U.S.C. § 4336e(10)(B) (excluding non-Federal actions with no or minimal Federal funding; non-Federal actions with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project; funding assistance solely in the form of general revenue sharing funds which do not provide Federal agency compliance or enforcement responsibility over the subsequent use of such funds; loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action; business loan guarantees provided by the Small Business Administration; bringing judicial or administrative civil or criminal enforcement actions; extraterritorial activities or decisions; and activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority).

[15] 88 Fed. Reg. 43348.

encourage agencies to ensure they dedicate adequate staffing resources to undertake and timely complete NEPA reviews.

b. CEQ Should Adopt An Advisory Role In Assisting Agencies To Revise Their NEPA Procedures.

The IFR emphasizes that NEPA established CEQ as an advisory agency charged with reviewing the extent to which federal programs and activities correctly implement NEPA and with making related recommendations to the President.[16] NEPA requires federal agencies to consult with CEQ to identify methods and procedures relevant to compliance with the statute.[17] As delineated in the IFR, CEQ will continue to have a critically important role in fostering effective and efficient NEPA compliance after the IFR takes effect.

Development of and investment in critical infrastructure projects and responsible use of natural resources require predictability and certainty surrounding the environmental review process. CEQ should assist the agencies in addressing any process gaps during this interim period and in the wake of court decisions holding that CEQ lacks authority to issue binding NEPA regulations and subsequent developments.[18] The Coalition encourages CEQ to continue to communicate the message that agencies should not delay required reviews and to proceed with assisting federal agencies in quickly adopting long-lasting NEPA procedures that can be implemented consistently and will lead to durable agency decisions that will withstand judicial scrutiny.

CEQ should encourage and guide federal agencies to adopt NEPA procedures that maximize consistency across agencies and enhance and ensure the efficiency, predictability, and transparency of the permitting process. The focus of the procedures should be on the statute's requirements, including amendments made by the FRA; emphasizing NEPA's role and limitations as a "process" statute; appropriately expanding the availability of categorical exclusions; adopting consistent approaches to assessment of "reasonably foreseeable" effects tied to causation; and drafting narrowly tailored purpose and need statements that appropriately reflect project sponsors' goals, as limited and delineated by the relevant agency's statutory authority.

The Coalition and the members we represent are committed to working constructively with CEQ and federal agencies on implementing the IFR and the February 19 Guidance in a way that will assist federal agencies in considering the reasonably foreseeable impacts of their actions.

c. It is Critical That Agencies Continue Reviews Without Delay Using Existing Authorities and Guidance.

To comply with NEPA during the interim period when agencies are revising their NEPA procedures, and consistent with CEQ's February 19 Guidance, agencies should follow the Unleashing American Energy Executive Order and: (1) their authorizing statute, (2) the text of NEPA , (3) any existing agency-specific NEPA procedures that the agency deems consistent with the text of NEPA, and (4) to the extent there are

[16] 90 Fed. Reg. at 10611-10612 (citing 42 U.S.C. § 4342).
[17] *Id.* at 10612 (citing 42 U.S.C. § 4332(2)(B)).
[18] *See Marin Audubon v. Fed. Aviation Admin.*, 121 F.4th 902 (D.C. Cir. 2024), *reh'g en banc denied*, 2025 WL 374897 (Jan. 31, 2025); *Iowa v. Council on Envtl. Quality,* 24-cv-0089 (D. N.D Feb. 3, 2025).

outstanding questions regarding NEPA compliance, the CEQ regulations as non-binding guidance.[19] It is critical that agencies continue to assess proposals for action without delay during the period while they are developing or revising their implementing procedures. While federal agencies revise their NEPA procedures, CEQ's February 19 Guidance advises agencies to consider voluntarily relying on CEQ's NEPA regulations to complete pending or ongoing NEPA analyses or to defend against challenges to NEPA reviews completed while those regulations were in effect.[20] Having a clear set of guidelines that agencies are familiar with when finalizing pending NEPA reviews or initiating new NEPA reviews during the 12-month revision period will help ensure that agencies prepare NEPA documents quickly and that these documents are legally defensible.

d. CEQ Should Encourage Agencies To Require Adherence To The FRA, Including Requirements Concerning Deadlines And Page Limits.

Although the FRA made certain amendments to NEPA designed to streamline and speed up the permitting process, federal agencies have not fully implemented these requirements. For example, the FRA set deadlines to streamline the NEPA process, including two years for the preparation of an environmental impact statement ("EIS") and one year for preparation of an environmental assessment ("EA").[21] Still, agencies routinely surpass these deadlines,[22] presumably relying on a section of the FRA allowing agencies to extend their NEPA deadlines in consultation with the applicant to provide "only so much additional time as is necessary to complete" the EIS or EA.[23] Similarly, the FRA set page limits of 75 pages for EAs and 150 pages for EISs, but allows up to 300 pages for EISs involving "extraordinary complexity."[24]

CEQ should encourage agencies to reflect these deadlines and page limits in their NEPA regulations and include procedures to ensure compliance with Congress's mandates in the FRA. For example, agency NEPA procedures could specify what constitutes an EIS containing "extraordinary complexity" warranting an extension of the page limit. CEQ should also encourage agencies to adopt procedures for ensuring that agencies can meet the presumptive statutory deadlines by making the circumstances for exceptions narrow.

In addition, CEQ should discourage agencies from evading or otherwise frustrating the deadlines added in the FRA by such methods as unreasonably failing to issue a notice of intent and thereby delaying the start of the 2-year time period for completing an EIS. Such delays can arise when an agency asserts that an application is incomplete, and requires ever more information and analysis as a precondition to starting the NEPA review clock. CEQ should work with agencies to move more quickly to the official start date to

[19] *See infra* n. 6 (citing 2020 NEPA Rule). In light of the Administration's decision, reflected in the IFR, to rescind the CEQ NEPA regulations given the withdrawal of Executive Order 11991 and recent court decisions holding that CEQ does not have authority to issue such regulations (*see supra* n.17), the guidance appropriately notes that agencies should always ground their NEPA analyses in the statute (as amended by the FRA) itself, and that any prior, now-revoked regulations may be construed merely as guidance.

[20] February 19 Guidance at 1 (citing 2020 NEPA Rule).

[21] 42 U.S.C. § 4336a(g)(1). The FRA amendments also require each lead agency to annually report to Congress and identify any EAs or EISs that were not completed by the statutory deadlines. *Id.* at § 4336a(h).

[22] *See Signal Peak Energy, LLC v. Haaland*, No. 24-CV-366, 2024 WL 3887386, at *1 (D.D.C. Aug. 21, 2024) (infrastructure project sponsor alleging agency violated 2-year statutory deadline for preparation of an EIS by taking approximately 3.5 years).

[23] 42 U.S.C. § 4336a(g)(2).

[24] *Id.*

provide more certainty to project sponsors. This is consistent with the February 19 Guidance, which advises agencies to ensure that the NEPA process begins at the "earliest reasonable time."

In another example, the FRA directed agencies to establish procedures that will allow project sponsors to prepare "an environmental assessment or an environmental impact statement under the supervision of the agency."[25] Yet agencies have not taken full advantage of this provision – one designed to speed the process without compromising NEPA's purpose. This is a critically important tool that agencies should be encouraged to fully implement as soon as possible.

It is important that CEQ ensure the FRA's NEPA reforms are carried out consistently and to their fullest extent. These statutory reforms sought to streamline NEPA and create a shorter, more efficient federal permitting process. Strengthening agency implementation of these reforms will serve CEQ's goals of ensuring agency NEPA processes are tied to the language of the statute and expediting the permitting process.

e. CEQ Should Encourage Agencies To Expand Available Categorical Exclusions and To Rely On Programmatic Review Options and Tiering To Reduce Unnecessary Red Tape For Proposed Actions That Should Not Require Additional NEPA Review.

Federal agencies should consider revising their NEPA regulations to streamline their process for establishing new categorical exclusions for actions not expected to result in significant environmental impacts. First, agency NEPA procedures should incorporate the FRA's NEPA amendments, which contain several provisions designed to clarify federal agencies' ability to rely on categorical exclusions. For example, the FRA allows an agency to "adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established . . . ."[26] An agency must "identify the categorical exclusion," "consult with the agency that established the categorical exclusion to ensure that the proposed adoption . . . is appropriate," "identify to the public the categorical exclusion," and "document adoption of the categorical exclusion."[27] In practice, this should allow for quick adoption of other federal agency categorical exclusions and help reduce paperwork burdens on agency staff.

Federal agencies should also consider whether there are additional types of actions that are not expected to result in significant environmental impacts but are not yet covered by a categorical exclusion. Agencies should establish categories of actions that usually result in findings of no significant impact and create categorical exclusions for these categories. Additionally, CEQ should also build on its efforts undertaken during the first Trump Administration to create a single list of categorical exclusions that can be easily searched by federal agencies and project proponents, such as through use of a searchable web database, for swifter identification and potential reliance on categorical exclusions. If a categorical exclusion is available for a project sponsor's use, each agency's NEPA procedures should outline a process requiring the agency to allow use of the categorical exclusion or explain why the project does not qualify for the categorical exclusion within a reasonable period of time.

Additionally, federal agencies should continue pursuing the appropriate use of available programmatic NEPA permit reviews and tiering to reduce the level of NEPA analysis required considering the routine and low-impact nature of certain proposed actions. Federal agencies should also clarify that existing and

[25] *Id.* § 4336(a)(f).
[26] 42 U.S.C. § 4336c.
[27] *Id.*

completed NEPA-related documents can be relied upon for future decisions – including by allowing abbreviated reviews to be tiered from those documents and by otherwise relying upon such documents and using them to ensure that new reviews are narrowly tailored as appropriate for a new proposed action. This approach will eliminate the need to duplicate substantial portions of completed NEPA reviews, reduce the time it takes agencies to complete a review, and avoid wasting agency and project proponent resources.

f. CEQ Should Encourage Agencies To Adopt Consistent Approaches To Assessing "Reasonably Foreseeable Environmental Effects Of The Proposed Agency Action" Based On The Scope Of The Agencies' Specific Statutory Authorities And Proposed Action.

The FRA's amendment to Section 102(2)(C) of NEPA requires an EIS to analyze "reasonably foreseeable environmental effects of the proposed agency action . . . ."[28] CEQ's 2024 NEPA rule purported to require agencies to consider effects in "global, national, regional, and local contexts" in a wide range of cases, significantly expanding the complexity and scope of NEPA review beyond the statutory parameters.[29] To prevent this, CEQ should encourage agencies to adopt well defined and appropriate limits on what is reasonably foreseeable based on the nature of the "agency action" and the environmental impacts over which the federal agency has control.[30] Agencies should consider only the impacts proximately caused by the proposed agency action, not any degree of speculative and attenuated potential impact.[31] As the 2020 NEPA Rule warned, effects "should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain."[32] Ensuring a proper focus on the limits on reasonably foreseeable environmental effects will help protect agencies and projects against baseless litigation over hypothetical, tangential, or de minimis effects. Where necessary, each agency's approach may be tailored specifically to the types of actions the agency reviews; agencies should strive to achieve as much consistency as possible to provide increased certainty to applicants.

g. CEQ Should Encourage Agencies To Adopt Requirements For A Narrowly Tailored, Clearly Defined Purpose And Need Statement And Alternatives Analysis That Reflect The Applicant's Goals And The Agency's Statutory Authority.

Consistent with the text of NEPA, CEQ should strongly encourage agencies to define the purpose and need statement based on an applicant's project goals, as informed by the agency's statutory authority to avoid analysis of impractical or infeasible alternatives. An agency's development of the purpose and need must be reasonable. Courts have recognized "the rule of reason does not give agencies license to fulfill their own prophecies, whatever the parochial impulses that drive them."[33] The agency's statutory authority and purpose and need for an action defines the proper scope of the agency's analysis of alternatives, which must be feasible and reasonable.[34] The FRA's amendments to NEPA confirmed this, and the statute

[28] *Id.* § 4332(C).
[29] 80 Fed. Reg. 35442, 35464-65, 35557 (May 1, 2024) (National Environmental Policy Act Implementing Regulations Revisions Phase 2).
[30] Such guidance may be informed by the Supreme Court's upcoming decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, Case No. 23-975.
[31] *See Dep't of Public Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004).
[32] Final 2020 NEPA Rule at 43375.
[33] *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).
[34] *Id*. at 195 ("CEQ regulations oblige agencies to discuss only alternatives that are feasible, or (much the same thing) reasonable").

now explicitly provides that "a reasonable range of alternatives to the proposed agency action" must be "technically and economically feasible, and meet the purpose and need of the proposal . . . ." [35]

Because it dictates the array of alternatives analyzed, the purpose and need statement can give rise to unnecessary delay and cost. Where an overly broad purpose and need statement generates several impractical or infeasible alternatives, the lead agency may expend months and add dozens, if not hundreds, of pages to an environmental review analyzing alternatives that could never be implemented due to infeasibility or a lack of fit with the applicant's goals and provide little to no practical information to the agency or the public. Creating a purpose and need statement that is either too abstract or dominated by factors other than the applicant's goals can result in alternatives that are too divorced from the private applicant's proposed project to be considered practical or feasible.[36]

h. Agencies Should Consider Agency-Specific Factors In Determining Whether Public Comment Is Required When Adopting Revisions To Their NEPA Procedures.

CEQ should encourage agencies to consider agency-specific factors in determining whether public comment is required when adopting revisions to their NEPA procedures. For example, agencies may conclude that they are not required to seek public comment on revisions to NEPA procedures that do not seem significant but other factors may warrant agencies' reaching a different conclusion in some situations.[37] If an agency is changing a long-standing procedure that is routine for applicants, the agency may consider providing the public with the opportunity to comment on the agency's departure from its long-standing practice. Moreover, agencies should consider litigation risk when determining whether a public comment period is required, keeping in mind that legal durability and predictability are critical to the Coalition's members and to an effective permitting system generally. When appropriate and consistent with Administrative Procedure Act requirements, requesting and responding to public comment can promote transparency, mitigate legal risk, and enhance the durability and predictability of NEPA reviews that are crucial to private investment.

Regardless of whether an agency decides to use notice-and-comment rulemaking procedures, Coalition members would benefit from being kept apprised of each agency's progress in revising its NEPA procedures over the 12-month revision period. Updates to agency webpages or CEQ providing a webpage compiling the status of each agency's NEPA procedure revisions would help current and future project sponsors track the status of each agency's NEPA procedures.

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[35] 42 U.S.C. § 4332(C)(iii).

[36] *See Protect Our Parks Inc. v. Buttigieg*, 10 F.4th 758, 764 (7th Cir. 2021) (per curiam) ("Put another way, the agencies must take the objectives they are given and consider alternative means of achieving those objectives, not alternative objectives.") (citing *Busey*); *Del. Riverkeeper Network v. U.S. Army Corps. of Eng'rs*, 869 F.3d 148, 157 (3d Cir. 2017) (stating that an alternatives analysis involves looking to "the range of projects that could achieve the same goal as the proposed project"); *Webster v. USDA*, 685 F.3d 411, 422-24 (4th Cir. 2012) (providing that "[i]n deciding on the purposes and needs for a project, it is entirely appropriate for an agency to consider the applicant's needs and goals" and considering whether agency's purposes and needs were consistent with statutory authorization); *Coal. for Advancement of Reg'l Transp. v. Fed. Highway Admin.*, 576 Fed. App'x. 477 (6th Cir. 2014) (quoting *Busey*, 938 F.2d at 196) ("Agencies should consider . . . 'the needs and goals of the parties involved' and the 'views of Congress' in developing a purpose and need statement); *HonoluluTraffic.com v. Federal Transit Admin*., 742 F.3d 1222, 1230 (9th Cir. 2014).

[37] Agencies should reference the portion of the APA guiding an agency's determination of whether notice and comment is required. *See* 5 U.S.C. §§ 533(b)(4)(A-B)).

III. Conclusion

We appreciate the opportunity to provide comments on the IFR. This is an important opportunity for CEQ to guide agencies towards the adoption of NEPA procedures that promote consistency and principles that are critical to an efficient, predictable, and legally defensible environmental review and permitting process. The Coalition welcomes the opportunity to answer questions you may have or to provide additional information related to our comments.

Sincerely,

U.S. Chamber of Commerce
American Chemistry Council
Agricultural Retailers Association
American Exploration & Production Council
American Farm Bureau Federation
American Forest Resource Council
American Fuel & Petrochemical Manufacturers
American Gas Association
American Petroleum Institute
American Public Gas Association
American Public Power Association
American Road & Transportation Builders Association
Associated Builders and Contractors
Associated General Contractors of America
Association of American Railroads
Center for LNG
The Fertilizer Institute
GPA Midstream Association
Hardwood Federation
Independent Petroleum Association of America
Interstate Natural Gas Association of America
Liquid Energy Pipeline Association
National Association of Home Builders
National Cattlemen's Beef Association
National Mining Association
National Ocean Industries Association
National Rural Electric Cooperative Association
Natural Gas Supply Association
Public Lands Council