

July 26, 2018

Mr. Edward A. Boling

Associate Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

RE: IAP2 USA Comments in Response to a Proposed Rule
by the Council on Environmental Quality on 06/20/2018:
*Update to the Regulations for Implementing the Procedural Provisions of the National
Environmental Policy Act*

The United States Affiliate of the International Association for Public Participation (IAP2 USA;
<https://iap2usa.org/>) wishes to submit comments on the CEQ's question 6. Our response is
organized into three parts:

- **Question 6:** Its wording and our belief that revisions and updates to regulations are appropriate.
- **IAP2 USA's Recommendations in Regard to Question 6:** In total, we provide eight specific recommendations, along with supporting discussion on each of these recommendations.
- **Supporting information:** This section identifies NEPA's significance for providing public participation, our unique standing on the topic of public participation, the consistency of our recommendations with President's Management Agenda, and importance of the core values offered by our organization in carrying out quality public participation.

Part 1:

Question 6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

Yes, IAP2 believes that several revisions and updates to regulations relating to public involvement are needed. The recommendations below include those of the IAP2 USA Board on behalf of our membership across the country. We believe they are also consistent with the views of the National Association of Environmental Professionals (NAEP), with whom we have coordinated in this response. These recommendations are followed by supporting arguments and further detail of our suggestions.

Part 2:

IAP2 USA Eight Recommendations in Regard to Question 6

1.) Improve Customer Service by Providing Sufficient Time for Quality Participation: In §1501.7(Scoping), §1503.1 (Inviting Comments), and §1506.6 (Public Involvement) clarify that public notification, scoping, and public review/comment periods should be of sufficient duration to allow the full range of interested parties to participate, and that duration should be dictated by the complexity of the proposal and the level of public interest anticipated or evidenced in the proposal. The experience of four decades of NEPA practice indicates that effective public participation takes time. The need for adequate time is essential when working with the range of and a variety of hard-to-reach or disenfranchised groups caused by past policies and systems, or by geographic, economic, physical, and/or cultural barriers. This includes: Native American communities, immigrant communities, non-English speaking stakeholders or for whom English is a second language, persons of color, the disabled, and lower-income populations. Customer service isn't met through "efficiency" alone, but by sound decisions and increased public trust. Failing to allow adequate time for public involvement during all phases leading up to a decision can and oftentimes has resulted in significant controversy, delay, permitting difficulty, litigation that could have been otherwise avoided, and increased project cost after a decision.

2.) Participation should play a central role in defining issues: Public involvement should play a central role in defining the issues to be analyzed. This can be achieved most effectively by providing opportunities for public input as early as possible in the NEPA process, during and even before the scoping process. In §1501.7(a)(1) clarify that the reference to "other interested persons" includes members of the public, organizations, and other possible stakeholders in the outcome of a proposal. Further, we recommend that demonstrated high levels of public interest, concern, or controversy in a proposal be considered in evaluating the potential "significance" of issues – and therefore impacts – of proposals.

3.) Public Participation should play a central role in defining alternatives: Public involvement should play a central role in defining the alternatives to be analyzed. CEQ regulations define alternatives as "the heart of the EIS" but are silent on the need or provision for public involvement in the development and review of alternatives to the proposed action. Yet, in our experience, we find that this is the most important and most effective stage of the planning process in which the public can have a meaningful influence on the course of the analysis. Because public review is not specifically called for at this milestone, many agencies are reluctant to include it in their process or schedule. By specifying that public involvement should be conducted at this stage, this ambiguity would be eliminated. We believe that public input into the range of alternatives can and often does result in more reasonable, creative, and publicly-acceptable alternatives that could reduce the need for extensive mitigation.

4.) Public participation requirements should be defined for Environmental Assessments:

Public involvement requirements for Environmental Assessments (EA) have always been unclear. Public notice requirements for EAs should be specified. The regulations should outline provisions for public input to EAs, particularly since a primary function of an EA is to help evaluate the potential for significant impacts, a process in which the affected public can add valuable input.

5.) Update noticing methods for public participation: IAP2 notes that the regulations in general outline only minimal public notice efforts, often resulting in minimal public participation. We suggest that options for public notice referenced in §1506.6(b) be broadened to allow for the use of new, technological, and innovative communication methods developed since the regulations were written. Many of these methods (such as cell-phone and web-based applications) can be used to reach much wider audiences including low income, minority, and disabled individuals.

6.) Broaden the definition of public review: IAP2 members practice a range of public participation methods that are tailored to the objectives of various decision-making processes. Public involvement professionals have developed a myriad of dialogue forums that expand the effectiveness of traditional public meetings and hearings in many situations in which there are no effective substitutes for face-to-face communication, deliberation, conflict management, or consensus-building. Additionally, scores of technology-based interactive techniques have become available since promulgation of the original CEQ regulations that greatly-expand public access to information and opportunities for comment including online engagement tools, social media, and even e-mail. We want to encourage use of a wider range of creative and collaborative techniques to provide information and to receive useful feedback. We recommend that CEQ broaden the definition of public review (for both EISs and EAs) by providing for flexibility in public involvement approaches in the regulations at §1503.1(4) (Inviting Comments), among others, and encourage considered application of a broad range of public consultation techniques so that methods can be tailored to the decision-making objectives and publics that need to be engaged. Additionally, recommendation #5 regarding the use of new, technological and innovative communication methods should also be reviewed for their ability to support this objective.

7.) Encourage collaboration among Agencies and the Public: We support encouraging opportunities for collaboration among agencies and between agencies and the public at every stage of the NEPA process. The distinct benefits of collaborative approaches have been outlined by the CEQ itself in its 2007 publication *Collaboration in NEPA: A Handbook for NEPA Practitioners* (https://www.energy.gov/sites/prod/files/CEQ_Collaboration_in_NEPA_10-2007.pdf). These benefits include:

- streamlining
- reducing agency overlap
- reducing study timeframes
- full consideration of the range of perspectives
- focusing on significant issues
- higher levels of agreement
- more implementable decisions
- increasing trust in government

All of these outcomes give the public a better experience when working with public agencies and improve customer service. We note that this document uses among its sources the *IAP2 Spectrum of Public Participation*. We suggest that this guidance be referenced in the regulations and made available through the CEQ website.

8.) Provide a NEPA library and portal to improve customer access to NEPA undertakings:

IAP2 USA observes that many agencies make access to NEPA documents issued for public review difficult, with minimal public notice and requiring navigation of complex and sometimes non-intuitive dockets on websites. To address this, we suggest that the CEQ expand its own website to act as a library of both NEPA reference documents (amazingly, not currently available here) as well as a gateway to assist the public in finding and tracking the progress of current NEPA undertakings including EISs, EAs, and Categorical Exclusions.

Part 3:

Supporting Information

As background to these recommendations, we want to acknowledge the history of NEPA on public participation, as well as share IAP2's principal tenets for how that participation should occur.

Historical Effect of NEPA on Establishing Best Practices for Public Involvement in the U.S.

Without the influence and support provided by the National Environmental Policy Act of 1969, and particularly by the Council on Environmental Quality's implementing regulations at 40 CFR Parts 1500-1508, there would be no nationally-accepted framework for encouraging citizens to participate in major governmental decisions that affect their lives and livelihoods. NEPA legitimized public involvement in the United States and served as the "ground floor" upon which a robust and rigorous professional practice developed to:

1. help people gain access to decision makers in a meaningful and constructive way, and
2. help decision makers to interpret and use public input to create more sustainable decisions.

More pertinent to this question, CEQ regulations provided a clear avenue for the public to be informed about proposals and to have influence on the ultimate decisions about those proposals, with the knowledge that their concerns were being heard. The importance of this concept in the basic practice of American democracy cannot be overstated. This pivotal tenet of the CEQ's regulatory framework must be retained and enhanced wherever possible through the lessons learned over nearly 50 years of NEPA public involvement practice as part of the country's pursuit of its democratic ideals. This is captured in one of IAP2's core values stating that those who are affected by a decision have a right to be involved in the decision-making process. It is crucial that the government provide the means for that involvement to be genuine, functional, timely, accessible and trusted.

IAP2 Description & Standing

With more than 7,500 members worldwide, the International Association for Public Participation (IAP2; <https://www.iap2.org>) is the only global organization focused entirely on the development, implementation, improvement, and promotion of best practices for public involvement as it affects the public interest in nations throughout the world. Our members are derived from all levels of government and private industry in fields such as NEPA planning, transportation and infrastructure, energy, mining, and natural resource management. ***IAP2's mission is to advance and extend the practice of public participation.*** We do this through global affiliates in the United States, Canada, Australia/New Zealand, the countries of Southern Africa, Indonesia, and Italy and through outreach to other unaffiliated countries. Our focus areas are to:

- Advocate for good public participation throughout the world
- Promote a results-oriented research agenda and use research to support educational and advocacy goals
- Provide technical assistance to improve public participation
- Serve the learning needs of members through events, publications, and communication technology

Established in 1990, IAP2 has developed foundational materials that are widely considered the standard of practice for effective public participation ([3 Pillars of Public Participation](#)) These are:

- IAP2 Core Values
- IAP2 Code of Ethics
- IAP2 Spectrum of Public Participation

Additionally, we have developed and deliver comprehensive training courses including a 40-hour *Foundations in Public Participation* and a 2-day *Opposition & Outrage in Public Participation*, which have been completed by more than 19,000 students around the world.

Comments in Conformance with President's Management Agenda

IAP2 notes that, at the highest level, the concepts of good public participation are consistent with the current President's Management Agenda, Cross-Agency Priority #4 (<https://www.whitehouse.gov/omb/management/pma/>), which seeks to improve "customer experience" in relations with the federal government. We agree that improving service is crucial to rebuilding trust in government. We recognize that the public's trust in the federal government has decreased from 73% in 1958 to 18% today (Pew Research Center, 12/14/17). The goal of improving service to rebuild trust must start with the concept that the public is more than a customer, a term associated with private industry. Private industry does not have the mandate to demonstrate democracy in action or the responsibility or the obligation to

govern itself by the will of the people in the way that our government does. Although we appreciate the goal of improved service, that service must be grounded in the fundamental notion that a member of the public has unique standing in a democratic union, separate from and more advanced than the standing of a customer of a business, as only government has the responsibility to serve the people it governs.

As such, we submit that it's in the government's own interest and consistent with the basic premise and roles within a democracy that it foster adequate, timely, numerous, transparent opportunities for the public to understand and participate in federal decision-making processes. Those are the means through which it can grow back the trust of the public in its government. This approach includes providing methods for "customers" to evaluate the processes. The CEQ NEPA regulations initially recognized this critical factor and should continue to do so.

Need to Consider Core Values of Public Participation

In adopting NEPA, "The Congress recognize(d) that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment". The principles of public involvement have been developed to assist people to responsibly contribute to decisions that affect the "human environment".

As an international leader in public participation, IAP2 has developed the "IAP2 Core Values for Public Participation". The purpose of these core values is to help make better decisions which reflect the interests and concerns of potentially affected people and entities as well as the project sponsor. We urge the CEQ to consider and embrace these principles in your undertaking to update the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act:

IAP2 Core Values for the Practice of Public Participation

- 1 Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.**
- 2 Public participation includes the promise that the public's contribution will influence the decision.**
- 3 Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.**
- 4 Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.**
- 5 Public participation seeks input from participants in designing how they participate.**
- 6 Public participation provides participants with the information they need to participate in a meaningful way.**
- 7 Public participation communicates to participants how their input affected the decision.**



The Core Values define expectations and aspirations of the public participation process. Processes based on the Core Values have been shown to be the most successful and respected.

In closing, IAP2 USA appreciates the opportunity to submit our comments and suggestions in support of CEQ's important and difficult undertaking. We would be pleased to help you in any way that we can - just ask. Please contact our Executive Manager Amelia Shaw by e-mail at ameliaiap2usa@gmail.com.

Respectfully submitted,



Leah Jaramillo
President
IAP2 USA Board of Directors