



# Making American Energy Great Again

**Transition Team Issues:  
American Oil and Natural Gas Production**



INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA  
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# Memo



## **INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA**

To: Trump Transition Team  
From: IPAA President and CEO Jeff Eshelman  
CC: IPAA Board of Directors  
Date: 11/19/2024  
Re: IPAA Issues and Priorities

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The Independent Petroleum Association of America (IPAA) congratulates President Trump on winning another presidential term. IPAA appreciates his commitment to energy leadership and security, and we look forward to collaborating with the administration on the issues important for sustained oil and natural gas production in the United States.

Our members are the primary producers of the nation's oil and natural gas and account for 83 percent of America's oil production and 90 percent of its natural gas output. Independent American producers are a driving force in our economy and support millions of jobs in the United States.

IPAA's priorities include equitable tax policies for energy businesses, sensible environmental regulations, reform of the National Environmental Policy Act (NEPA)/permitting reform, access to federal lands and waters, reforms to the Endangered Species Act, and lifting the pause on issuing permits for liquefied natural gas (LNG) export facilities. We also want to shift the policies of the federal government from meeting international climate goals to focus on energy security for Americans and increasing U.S. business competitiveness internationally.

As you well know, the choices our nation makes regarding energy policy will have an enormous impact on America's economy and our position in the world. We urge the administration to take positive actions to support America's small oil and natural gas producers and develop a robust energy

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policy that will unleash American entrepreneurs, expand our economy, and make the United States an energy superpower once again. This will not only benefit the United States, but nations around the globe.

Enclosed are several issues we believe are key to helping the United States remain at the forefront of energy development in the coming years. In addition, attached is a more detailed issues document outlining specific actions IPAA believes are necessary for the United States to remain the global energy leader in the years ahead. America's independent oil and natural gas producers play a critical role in our country's domestic energy development, and we look forward to collaborating with you and your administration to find innovative solutions to address America's energy challenges.

- **Tax Policy**

Tax policies, particularly those designed to punish the energy sector, only serve to raise costs for consumers while limiting opportunities for growth and development. Any proposed modifications to the tax code regarding American energy policy must recognize the critical role capital formation and capital recovery play for our nation's oil and natural gas industries. It is key for our industry to retain necessary and ordinary business tax treatments critical to capital recovery and redeployment. We also support any efforts to lower the overall tax liability for American companies, allowing for a greater degree of investment and growth. America's oil and natural gas producers continue to reinvest capital at a rate well over 100 percent of their U.S. cash flow, hiring employees, purchasing equipment, and exploring new energy frontiers. Sound tax policy regarding the oil and natural gas industry has been a significant reason the United States is a leader in energy production and is poised to remain there for years to come.

- **Methane**

The Trump Administration should work with Congress to repeal EPA's methane tax. IPAA has always opposed the methane fee and believes it is simply a tax to further hamper American oil and gas production. It exemplifies the worst in legislation and was written without hearings, committee reports, conference reports or appropriate floor debate. We encourage the Administration to work with Congress to eliminate this unnecessary tax on American oil and natural gas producers as soon as possible.

Well-structured, cost-effective regulations are essential to manage methane emissions while assuring that American oil and natural gas

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producers can provide the energy demanded by the U.S. and world economies. At the same time, technology to manage emissions is evolving and the regulatory process needs flexibility to allow energy innovators to utilize innovative technology. Rather than mandate a “one-size-fits-all” system of rules and regulations, the EPA and other federal regulatory agencies need to embrace evolving information and technologies to address issues surrounding the management of methane.

One key aspect of the independent component of the American oil and natural gas production industry is its breadth – spanning from large publicly traded companies to small business and from large, high production wells to marginal production wells. Of the roughly one million active oil and natural gas wells in the United States, about 750,000 are low production wells. However, these low production oil wells produce about one million barrels/day and low production natural gas wells account for 8 to 10 percent of U.S. production. The regulatory structure to address methane emissions applied to low production wells is significant because their viability is dependent on their cost of operation.

EPA needs to ensure the agency develops a cost-effective regulatory program that encourages energy innovators to address methane and other issues. The agency should look for ways to provide flexibility in its regulatory regime and encourage innovation in addressing these critical issues.

- **National Environmental Policy Act/Permitting Reform**

The National Environmental Policy Act (NEPA) needs to be updated and reformed. The outdated law has hindered needed investment in energy projects around the nation. Modernizing NEPA will benefit the economy, the environment and untangle delays that have held up vital infrastructure projects. Since its enactment, requirements involving NEPA have grown considerably and place a heavy burden on independent oil and gas producers operating on federal lands. While the law itself remains unchanged over the past 50 years, the courts, Presidential directives, and significant regulatory modifications have made NEPA unworkable and far more complicated than the original intent of the law.

A wide array of issues affects 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 and conservation

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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.

- **Access to Federal Lands and Waters**

Oil and natural gas production on federal lands and waters provides huge economic benefits to the United States in terms of jobs, royalties to the U.S. Treasury and economic benefits to states and local communities. The Biden Administration did everything possible to stop oil and natural gas production on America’s federal lands. It is unconscionable that at a time when the United States – and the world – needs increased oil and natural gas supplies, we are not looking to increase oil and natural gas exploration and development on federal lands here at home.

- **Endangered & Threatened Species**

Ensuring the protection of species and their ecosystems is a key component of American oil and natural gas exploration. However, the Endangered Species Act (ESA) continues to be used by opponents of American energy production to stymie needed energy projects across the nation. Leadership is needed to ensure listing decisions under the ESA are made in an open and transparent manner and are designed to achieve a positive outcome that will ensure protection of species while at the same time allowing important energy projects to move forward.

- **Lift the Pause on LNG Export Facilities**

The Trump Administration should immediately lift the Biden Administration’s pause on permitting new liquified natural gas (LNG) export facilities. The United States is blessed with abundant, clean natural gas that is the envy of the world. This misguided policy by the Biden Administration should be reversed and allow American natural gas producers to supply the world with this outstanding energy resource.

We encourage the transition team to visit [IPAA.org](https://www.ipaa.org) and IPAA’s educational resource websites [EnergyInDepth.org](https://www.energyinddepth.org) and [EnergyTaxFacts.com](https://www.energytaxfacts.com) for additional information on these issues that will be updated regularly.



## Tax Reform

The Trump Administration and GOP congressional leadership should prioritize tax reform in the 119<sup>th</sup> Congress. A key component of any tax reform initiative should be providing a tax structure that supports capital investment. Key oil and natural gas production tax provisions like the treatment of intangible drilling costs and percentage depletion have been historic, successful methods to allow for the aggressive capital needs to develop American oil and natural gas.

America's independent oil and natural gas producers have continued to increase investment in their exploration and production activities in the United States, increasing our nation's energy dominance on the global stage. American energy producers have preserved critical necessary and ordinary energy tax provisions which stimulate investment in safe energy production here at home. Creating jobs, stimulating the economy, and affording America its place as the global energy leader. These necessary and ordinary business tax treatments are designed to encourage growth and investment for energy producers large and small and we continue to see the results of this forward-thinking policy year after year with continued investment and increased production.

- **Intangible Drilling Costs**

Intangible drilling costs (IDCs) represent business operating costs incurred at a wellsite that don't, by themselves, produce a physical asset. This includes labor costs, leasing of equipment/vehicles, site preparation, drilling rig rentals, and more.

The standard IDC tax deduction has been around in one form or another for 100 years and is a standard tax policy principle reflected throughout the business ecosystem in the U.S. as expensing a business's operating costs. IDCs allow independent producers to recover 100 percent of their business costs in the year those costs were incurred. Drilling a well does not guarantee production; by reducing the business tax liability for investments made, operators have more certainty in their cash flow position from year to year which makes planning and investment more stable and the overall business more sound. Just as one would find in other industries. Removal of this tax treatment would strip away roughly 25 percent of available capital from operators as well as negatively impact induced economic activity that comes from reduced investment in energy production for America.

- **Percentage Depletion**

Percentage depletion has been a part of the U.S. tax code since 1926. Depletion is a form of depreciation for mineral resources that allows for a deduction from taxable income to reflect the declining production of reserves over time.

For oil and gas producers, percentage depletion is a small producer, and therefore small business, issue. Percentage depletion is only allowed for independent producers and royalty owners. The allowance is applied to only the first 1,000 barrels of oil (or 6,000 mcf of gas) and capped at the net income of the well along with other factors that allow only small producers to take advantage of this tax policy. Individually, a small well may only produce a fraction of the production of its larger counterparts but taken collectively, America's small wells account for roughly 8 percent of America's total production.

- **Passive Loss Exception**

The passive loss exception enables working interest owners in oil and natural gas production to achieve some parity between their investments and those of corporate shareholders. By counting any working investment losses as active instead of passive, investors can treat the normal business deductions from their investment the same way that a corporation would.

Most American wells today are drilled by small to midsize independent companies, many of which rely on individual investors as part of their financing strategies. Providing this parity between private and corporate investment tax treatment ensures a more equitable investment ecosystem that places the quality of investment at the forefront of consideration.

## **Methane Regulation**

There are approximately one million oil and natural gas wells producing in the United States with roughly 20,000 added each year. All oil and natural gas wells deplete over time with their production dropping as they age; essentially, all wells will become marginal wells if they operate long enough. Approximately 750,000 American wells are marginal wells (producing 15 boe/d or less) and are roughly equally divided between oil and natural gas. Of these about 600,000 are 6 boe/d and less; 330,000 are one boe/d and less.

The industry is made up of both larger companies that produce the bigger wells and the larger share of production and thousands of smaller producers of these marginal wells. Marginal wells account for about 7-8 percent of US production of both oil and natural gas. The economics of production differ significantly. Newer wells are now generally sites with multiple wells using hydraulic fracturing while most marginal wells are small with one or two wells per site in conventional formations.

The smaller marginal oil wells do not consistently operate continuously; some operate several hours per day, some several days per week, some one day per week. Many of the smallest natural gas wells need compressors to pull the gas from the well. These differences affect marginal wells emissions profiles.

The Trump Administration should review, modify, and repeal the following methane emissions regulations:

### **EPA Methane Tax**

- The Trump Administration should work with Congress to repeal EPA's methane tax. Congress passed the methane tax to single out and punish the oil and natural gas industry despite its already burdensome EPA regulatory framework. IPAA has always opposed the methane fee and believe it is simply a tax to further hamper American oil and gas production. We encourage the Administration to work with Congress to eliminate this unnecessary tax on American oil and natural gas producers as soon as possible.

### **EPA Methane Regulations**

- New Source Performance Standards (NSPS)/Existing Source Emissions Guidelines (EG) – the Clean Air Act (CAA) requires EPA to develop NSPS for significant industry categories.
  - EPA created NSPS for oil and natural gas production facilities in 2012 (Subpart OOOO) and 2016/2020 (Subpart OOOOa)
  - The 2021 Congressional Review Act resolution mandates that EPA regulate methane emissions for oil and natural gas facilities using NSPS/EG.
    - This Congressional mandate separates oil and natural gas production regulation from other Greenhouse Gas programs derived from an endangerment finding.
    - EPA promulgated Subpart OOOOb (NSPS) and Subpart OOOOc (EG) in 2024.



- Subpart OOOOc is the first time that the EPA NSPS regulatory program addresses existing sources.
  - NSPS becomes effective on a schedule in the regulations; EG requires states to develop implementation plans in 24 months and implement them in 36 months thereafter.
- **EPA’s use of its authority in developing the regulations in key areas produces the regulatory threats for marginal wells.**
  - Facility Definition – oil and natural gas producers generally consider a wellsite or a wellsite with storage tanks as a facility. EPA in Subpart OOOOb divides the wellsite into five separate facilities – wells, controllers, pumps, storage vessels and wellsites (only for LDAR<sup>1</sup>). It uses these same definitions for Subpart OOOOc. This allows EPA to assess the cost benefits of the controls for each type of facility without considering the collective impacts.
  - Best System of Emissions Reductions (BSER) – EPA is charged with determining the technology that meets the requirements of the NSPS, a task that should require EPA to identify and validate technologies. Instead, EPA has relied on studies by others, primarily environmental advocacy groups, and assumed they are valid.
  - Emissions Guidelines – In developing its BSER for existing sources, EPA has the flexibility to distinguish between different types of sources based on the nature of the industry, such as marginal wells differing from large, fractured wells, but it has not created a subcategory. More significantly, it should be making its technology decisions on existing sources, not applying the new source requirements. By dividing the wellsite into multiple facilities, EPA argues that the existing source technology is the same as the new sources.
  - State Plans under Section 111(d) – The CAA provides that states regulate existing sources through plans approved by EPA.
    - The framework of Section 111(d) was designed for a regulatory action that might affect two or three sources in a state, not the thousands of oil and natural gas wells that these regulations cover.
    - The CAA also provides flexibility to states to consider unique factors; a key element is consideration of “remaining useful life and other factors” (RULOF).
    - EPA’s revisions to the Section 111 (D) process are designed to limit the states’ statutory authority to develop a flexible plan to address marginal wells. For example, EPA asserts that RULOF should not be available unless significant capital costs are required knowing that its LDAR requirements are the most threatening regulations and LDAR essentially increases operating costs not capital expenditures.

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<sup>1</sup> Leak Detection and Repair

- **The Impact on Marginal Wells**

- Because of EPA’s action to divide the wellsite into multiple facilities, the aggregate economic impact on marginal wells is disguised.
  - For example, independent studies have concluded that as many as 300,000 marginal wells will be shut down if the EPA LDAR and pneumatic controller regulations are applied under Subpart OOOOc.
- Because marginal wells are older, they have depleted not only their production, but the internal forces that would drive emissions.
- Studies of marginal well emissions, notably one by the Department of Energy, show that the dominant emissions sources are tanks (where hatches have been left open or seals leak), pneumatic controllers that have not been maintained, and vents that have been left open.
  - All of these can be addressed through cost effective LDAR actions.
- EPA’s requirements do not reflect the differences between new and marginal wells.
  - LDAR – EPA is fixated on developing its LDAR regulations based on facility component counts while industry believes that production throughput should be a significant factor.
    - EPA use of component counts is partly driven by its focus on Super-Emitters (wellsites emitting over 130 mcf/d).
    - EPA uses two forms of LDAR – AVO (Audio-Visual-Olfactory) which is inexpensive and OGI (Optical Gas Imaging) which is expensive.
    - EPA created four LDAR categories. Using its component count approach that requires OGI for “large” wellsites, 70 to 90 percent of marginal wellsites will fall into the large category, compelled to quarterly OGI LDAR. (The largest marginal natural gas well is 90 mcf/d; the average is 22 mcf/d – they cannot be Super-Emitters.)
  - Controllers – Historically, process controllers have been operated using a slip stream of produced gas. EPA bans this technology for new sources and applies that ban to existing sources. It would require marginal wells to replace their controllers at substantial cost for limited environmental benefit.
    - Emissions estimates for pneumatic controllers have shown that proper maintenance can minimize their emissions.
  - Associated Gas Controls – EPA wants to terminate emissions from gas generated as a part of crude oil production by forcing it to sales, use at the site, or injection back into the formation. If these are infeasible, EPA requires flaring.
    - In developing its requirements, EPA never considered that marginal wells do not operate continuously – and do not generate gas continuously. Without continuous gas, flares shut down.
  - Storage Tanks – EPA generally requires new and modified storage tanks to recover vapors but recognizes that existing ones may not be structurally capable of adding controls. However, its definition of modification opens the potential that existing tanks could be covered.

- Compressors – EPA requires compressor controls at centralized production facilities but not at wellsites, but its definitions for these facilities are confounding and can capture small compressors used to produce natural gas that are separated from the wellsite to be considered as centralized production facilities.
  - Recordkeeping – EPA’s recordkeeping requirements are extensive and excessive for marginal wells.
- **Solutions to Address Impact on Marginal Wells**
  - EPA should use its authority under the Clean Air Act to create a subcategory for marginal wells and establish Emissions Guidelines that reflect their differences from new sources.
  - EPA should alter its Section 111(d) regulations to give states adequate flexibility to design regulations reflecting the differences between new and marginal wells and adequate time to develop their regulations.
  - Minimum changes to the Emissions Guidelines should include:
    - LDAR – AVO should be the LDAR requirements for marginal wells.
      - EPA’s quarterly AVO requirements should be applied to all marginal wells producing 6 boe/d or less.
      - As existing wells deplete to this production rate, the LDAR requirement should be revised accordingly.
    - Controllers – Existing well pneumatic controllers should be allowed with these controllers included in the scope of the AVO LDAR program to assure proper maintenance.
    - Associated Gas Controls – EPA needs to recognize the intermittent operation of marginal wells allowing venting of associated gas where it is technologically and economically infeasible to recover or flare it.
    - Storage Tanks – EPA needs to assure that normal business operations such as consolidating production into fewer tanks does not trigger a modification under the regulations.
    - Compressors – EPA needs to assure that small compressors essential to producing marginal well natural gas are considered part of the wellsite.
    - Recordkeeping – EPA needs to limit recordkeeping requirements on small business producers.

## National Environmental Policy Act (NEPA)

Since NEPA's enactment, the scope of its requirements and applications have grown considerably and place a heavy burden on IPAA members. While the law itself remains unchanged over the past 50 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 desperately needed infrastructure initiatives across the nation.

During the previous Trump Administration, efforts to modernize NEPA were undertaken that would have spurred key efficiency initiatives. However, the Biden Administration forestalled most of these needed changes and instead implemented relentless permitting obstacles and environmental analysis under NEPA to delay projects for years. Oil and natural gas exploration projects, pipelines, roads, bridges, and other vital infrastructure often cannot get built not because Americans do not have the capability to do so, but because of delay and obstruction caused by the bureaucracy of the federal government.

A wide array of issues affects timeframes for complying with NEPA. In an attempt to respond to relentless court challenges, federal agencies endlessly revise information requirements throughout the NEPA review process. Instead of working with the industries they regulate, to implement reasonable environmental and conservation efforts, the federal government gets 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.

IPAA endorses the following changes to NEPA:

- **Establish a NEPA Threshold Applicability Analysis**  
The Council on Environmental Quality (CEQ) should establish an initial threshold of NEPA applicability that provides further clarity when an action can be defined as a "major federal action" under the law. In addition, CEQ should explicitly clarify that, if an action is not a "major federal action," no analysis or further action is required under NEPA.
- **Reduce the Statute of Limitations for NEPA Analysis**  
The current six-year statute of limitations for aggrieved parties to file litigation after an agency makes a final permitting decision is too long. This creates uncertainty and puts projects into a "legal limbo" that only delays projects and drives up costs. The deadline should be reduced to 150 days (five months) for filing lawsuits against an agency action for an energy or mineral project.

- **Deadline on Agency Remand**

A 180-day deadline should be established if a court remands a federal agency authorization for an energy or mineral project back to the agency. In addition, the court should be required to set a reasonable schedule and deadline, not to exceed 180 days, for the agency to act on the remanded action.

- **Time Limits**

There should be strict time limits for Environmental Assessments (EA) and Environmental Impact Statements (EIS) under NEPA. Timing delays constitute one of the single most problematic issues facing independent oil and natural gas producers operating on federal lands. Some energy projects can take several years to complete. During this long time, conditions can change – projects become uneconomic, the technology used to develop a project can improve, environmental analysis can become stale, and environmental conditions can change. Establishing reasonable timelines for an EA or EIS is essential.

- **Limit the Scope of Review**

The scope of environmental review under NEPA should be limited to the reasonably foreseeable and economically feasible impacts of a project. Too often, federal land management agencies expand the scope of environmental reviews for oil and natural gas lease sales and go well beyond the limited impacts related to a specific sale.

## Access to Onshore and Offshore Federal Lands

Oil and natural gas production on federal lands and waters provides huge economic benefits to the United States in terms of jobs, royalties to the U.S. Treasury and economic benefits to states and local communities. The Biden Administration did everything possible to stop oil and natural gas production in America's federal lands and used the Endangered Species Act as a tool to hamper production in these areas. IPAA encourages the Trump Administration to take these actions on the following regulations and orders governing onshore and offshore federal lands.

### Onshore

- Focus on lease sales as mandated by the Mineral Leasing Act, offering quality parcels and contiguous acreage.
- Repeal the BLM Waste Prevention Rule changes finalized in early 2024.
- Rescind the America the Beautiful initiative.
- Revise the Fluid Mineral Leases and Leasing Process Final Rule which include significant changes to the bonding process as well as royalty rate percentages.
- Repeal the Conservation and Landscape Health Rule which elevates conservation to a "use" under the Mineral Leasing Act.
- Revisit changes made to the BLM Site Security and Measurement onshore order.
- Revisit decisions that led to changes regarding oil and natural gas development in the NPR-A and ANWR.

### Offshore

- Revise and reissue a new Five-Year Plan that includes ample lease sales to meet our domestic energy needs and enhances American energy security. The Biden Administration's final 2024-2029 plan will cripple offshore production for decades.
- Revise the 2020 Biological Opinion to address legal shortcomings.
- Repeal the Financial Assurance Rule that changes the bonding and insurance market and disproportionately affects independent offshore producers.

### Endangered Species Act

- Reinstate the Definition of Habitat Rule.
- Revisit the Greater Sage Grouse range-wide conservation plan and RMP updates looking at science and data gathered during the decision-making process.
- Revisit changes to Section 10(a) of the ESA, which deals with permit applications for takings.
- Revisit the final Rule listing the Lesser Prairie Chicken into two distinct populations.
- Revisit the Rule for listing Dunes Sagebrush Lizard despite lack of consideration for voluntary conservation measures taken by industry and landowners.
- Revisit the scientific data used to determine the Rice's Whale critical habitat rule.

## Lift the Pause on LNG Export Facilities

The Trump Administration should immediately lift the Biden Administration's pause on permitting new liquified natural gas (LNG) export facilities. The United States is blessed with abundant, clean natural gas that is the envy of the world. This misguided policy by the Biden Administration should be reversed and allow American natural gas producers to supply the world with this outstanding energy resource as soon as possible.