



November 22, 2021

Chair Brenda Mallory
Council on Environmental Quality (CEQ)
730 Jackson Place NW
Washington, DC 20503

RE: National Environmental Policy Act Implementing Regulations, Docket CEQ-2021-0002

Dear Chair Mallory:

Today, I write on behalf of Americans for Prosperity (AFP) activists across all 50 states to provide comments opposing the White House Council on Environmental Quality's (CEQ) proposed rule to revise the National Environmental Policy Act (NEPA) 2020 Modernization Regulations. This proposed rule is the first of a two-phased rulemaking, focusing on three areas: the "purpose and need" of a proposed action; removing limitations on agency NEPA procedures for implementing CEQ's NEPA regulations; and returning to the prior definition of "effects."

These comments focus on the obstacles the Biden administration is enacting, making it more difficult and expensive to build infrastructure, at odds with the 'Build Back Better' agenda. This proposed rule, accompanying executive orders, the Bipartisan Infrastructure bill, and the Build Back Better Act erect and magnify unnecessary and decades-old federal red tape. President Biden's agenda will delay and increase the cost of building roads, bridges, and new energy development and ultimately cost Americans.

In 1971, NEPA guidelines were promulgated to assess federal actions through the lens of environmental factors. This vague and ambiguous law affects everything from infrastructure projects, energy development, to fire management on lands prone to catastrophic wildfires. The 2020 NEPA Modernization Regulation was the first step in lifting the unnecessary regulatory barriers caused by NEPA over the last fifty years. It would have cut federal delays in approving major infrastructure projects in half.

In the first phase of this proposed rulemaking, the revisions may seem narrow in scope, changing definitions and reverting to the status quo of the 1978 NEPA Regulations. Yet, this reversal moves federal agencies backward in their consideration, review, and consultation with other agencies regarding the environmental effects of their proposals and actions in federal-aid project delivery. This outdated law will continue to slow the completion of projects, increase the costs to taxpayers, and contribute to endless administrative appeals and litigation that subject too many projects to death-by-delay.

The environmental impact statement (EIS) and environmental assessment (EA) required under NEPA can hold up projects for many years and cost thousands if not millions. These reviews can add a decade or more to federal-aid highway projects¹ and according to estimates from the Texas A&M Transportation Institute, these environmental reviews contribute between \$87,000 and \$1.3 million of cost for every month of delay, depending on the size of the project.² It is not only infrastructure projects that experiences these delays due to the environmental review process and NEPA.

The California Farm Bureau raised concerns regarding the changes being proposed in phase one based on their experience representing farmers, ranchers, and foresters. They identify “[e]xamples of this experience include our members encountering significant delays in obtaining and renewing federal grazing permits as well as securing timber sale contracts with some averaging over seven years to complete. In some cases, NEPA reviews have taken a decade or more to complete.”³ Mitigating for wildfire risk is extremely important especially in California and other western states, these delays have a very serious impact on the community and the environment. The Bureau continued: “California and many other western states continue to experience massive catastrophic wildfire and there is a strong correlation between timely forest management and hazardous fuel reduction projects that require NEPA and wildfire risk levels of our national forests.”⁴

This proposed rule, executive orders, and Build Back Better agenda miss the opportunity to waive or eliminate federal red tape that has prevented or dramatically increased the costs of real infrastructure and recovery projects.⁵ The administration has been actively erecting new barriers to infrastructure through unattainable regulations, reinstating unaccountable White House Climate Czar permitting power, and removing key regulatory reforms adopted in last four years. In Executive Order 14008, President Biden empowered National Climate Czar Gina McCarthy to review the siting and permitting process, accelerating “the deployment of clean energy and transmission projects in an environmentally stable manner.”⁶ This politicizes the permitting processes, encouraging and promoting politically preferred technology.

In comments submitted by the National Federation of Independent Business (NFIB), they suggest “[t]he tug-of-war between Democratic administrations and Republican Administrations over CEQ regulations that implement the NEPA demonstrates that: (1) the substantive policy preferences of presidents have warped interpretation of a procedural statute (NEPA) that was designed to be neutral as to substantive policy...”⁷ Prioritizing politically preferred technology through clean energy permits will not help our country “Build Back Better” or be economically sustainable. NFIB calls for the consideration of a repeal to NEPA, in our Rebuild Stronger Report released last summer we called for similar consideration.⁸ Unnecessary red tape makes infrastructure harder to build, slows down energy development, and increases the risk of

¹ <https://www.artba.org/wp-content/uploads/2020/03/ARTBA-Comments-Re-Docket-No-CEQ-2019-0003.pdf>

² <https://static.tti.tamu.edu/tti.tamu.edu/documents/0-6806-FY15-WR3.pdf>

³ <https://www.regulations.gov/comment/CEQ-2021-0002-0024>

⁴ <https://www.regulations.gov/comment/CEQ-2021-0002-0024>

⁵ <https://americansforprosperity.org/wp-content/uploads/2020/06/AFP-Rebuild-Stronger-Recommendations.pdf>

⁶ <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>

⁷ <https://www.regulations.gov/comment/CEQ-2021-0002-0022>

⁸ <https://americansforprosperity.org/wp-content/uploads/2020/06/AFP-Rebuild-Stronger-Recommendations.pdf>

wildfires. Cutting red tape and burdensome regulations will help our country rebuild the economy stronger than before.

AFP appreciates the opportunity to provide comment, and our activists look forward to consideration of this feedback.

Sincerely,

Abigale Tardif
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