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RE: National Environmental Policy Act Implementing Regulations Revisions Phase 2, 88 Fed. Reg. 49924 July 31, 2023, [Docket No. CEQ-2023-0003]

Ms. Coyle:

Please see the below comments from the America First Policy Institute regarding the National Environmental Policy Act Implementing Regulations Revisions Phase 2 (88 Fed. Reg. 49924 July 31, 2023, Docket No. CEQ-2023-0003). Thank you for the opportunity to comment.

The America First Policy Institute (AFPI) appreciates the opportunity to comment on the Council on Environmental Quality's (CEQ) proposed rule, *National Environmental Policy Act Implementing Regulations Revisions Phase 2*, 88 Fed. Reg. 49924 (July 31, 2023) ("Phase 2 Proposal," "the 2023 Proposal," or "the Proposal").

The America First Policy Institute

AFPI is a 501(c)(3) nonprofit, non-partisan research institute. AFPI exists to conduct research and develop policies that put the American people first. Our guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do. One of AFPI's core priorities is ensuring that America is a nation that can build and prosper. That is AFPI's public policy interest in a transparent, efficient, and predictable permitting process, which is instrumental to a prosperous America.

Introduction

The U.S. is in desperate need of federal permitting reform. It has become increasingly challenging to build much-needed infrastructure, as regulatory barriers mean that proposed projects can languish for years under piles of red tape.[1] Following approvals, many projects face lengthy litigation delays that are exacerbated by decades of parsing through unclear regulations. This means decaying infrastructure and stranded capital, which is a significant strain on our Nation's economic growth and security. Regulations under the National Environmental Policy

[1] Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43304 (July 16, 2020). Prior to the Trump Administration reform, CEQ found that the average environmental impact statement (EIS) for a single project was 661 pages and took 4.5 years to complete. This reality stood in stark contrast to the CEQ's 1981 prediction that federal agencies would complete the majority of EISs in less than 12 months.

Act (NEPA), through which every major federal action must be assessed, are a central challenge to efficient permitting. Americans need solutions that preserve needed environmental safeguards while providing timely and clear federal decisions to allow viable projects to move forward. The Trump Administration took action with its 2020 Reform rule, [2] the first comprehensive modernizing reforms to the NEPA implementing regulations in 40 years.

Unfortunately, the Biden Administration immediately sought to undo the 2020 Reform Rule. Moreover, despite recent bipartisan congressional action to streamline the permitting process, the CEQ's Phase 2 Proposal adds additional burdens and complexities to the NEPA process, far outweighing the positive progress introduced by congressional reforms. Thus, the Proposal runs contrary to congressional intent to create a more efficient permitting process and further damages the Nation's broken permitting system. Further, as the Phase 2 Proposal rolls back modernization and adds additional burdens on analysis, it attempts carve-outs for favored projects. This is a recognition of the failings of CEQ's own proposed processes to deliver efficiency and raises serious legal concerns. Our comments explain why the Phase 2 Proposal is both legally infirm and unsound as a matter of policy.

The 2023 Proposal largely continues the CEQ's improper course of piecemeal rollbacks of the sound and badly needed regulatory reform that it promulgated in 2020. It further adds additional burdens to the process that increase confusion, complexities, and delays. Instead, CEQ should effectively embrace the insights of its 2020 Reform Rule and Congress's bipartisan mandate to meaningfully implement reforms. Like the 2020 Reform Rule, these reforms should maintain and improve environmental protections while reducing unnecessary burdens and delays in infrastructure and other projects.

Our comments address several of the Proposal's key provisions that would contribute to a more burdensome, lengthy permitting process and litigation. The comments offer both general observations as to why aspects of the Proposal are legally deficient and bad policy, as well as specific analysis of key aspects of the Proposal, including the following concerns:

- The Biden Administration's piecemeal reversal of critical reforms is unlawful and damaging to our Nation's future.
- The Proposal does not properly implement the Fiscal Responsibility Act (FRA).
- The Proposal limits the efficacy of FRA reforms.
- The Proposal reduces clarity and adds confusion on the purpose of NEPA analysis.
- The Proposal increases project litigation risk.
- The Proposal's definition of "reasonably foreseeable" is inconsistent with established case law and congressional intent to increase permitting efficiency.
- The Proposal codifies expansive climate change and environmental justice considerations to unduly burden needed infrastructure and increases confusion, complexity, and delay.

[2] *See generally*, *supra* note 1.

- The Proposal's carveouts for projects favored by the Biden Administration reveal the policy and legal failings of the proposed rule.
- CEQ should not codify its National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change (2023 GHG Guidance)
- The 2023 GHG Guidance's preference for projects favored by the Biden Administration similarly reveals the failings of the Guidance.
- The Proposal's systematic preferencing of projects favored by the Biden Administration is problematic under the major questions doctrine.

ANALYSIS

I. The Biden Administration's piecemeal reversal of critical reforms is unlawful and damaging to our Nation's future.

The Trump Administration undertook the first comprehensive update[3] to the NEPA process in four decades by propagating regulations that included commonsense reforms to cut through excessive accumulated red tape and deliver needed modernization, without sacrificing necessary environmental protection. These reforms included presumptive time and page limits to the review process, enhanced interagency cooperation, and established a two-year goal for completion of environmental review. The Reform Rule sought to provide much-needed clarity and reduce litigation risk. The final rule was propagated after taking into consideration more than one million public comments and represented an important step toward a more efficient, predictable, and transparent permitting process.

However, despite increasing bipartisan recognition of the need for permitting reform and ambitious targets for renewable energy development, the Biden Administration identified the Trump Administration's Reform Rule as a target for review on day one.[4] The America First Policy Institute has previously filed joint comments on the Biden Administration's piecemeal rollback of the Trump Administration's 2020 Reform Rule, including formal comments on the Biden Administration's Delay Rule[5] and Phase 1 Proposal.[6] We are again submitting both sets of comments as attachments A and B, respectively. These comments are within the scope of this rulemaking, and all comments should be reconsidered with respect to this rulemaking. Together with our analysis of CEQ's latest Proposal, they help provide a more complete picture of both

[3] *See generally, supra* note 1.
[4] Press Release, White House Briefing Room, *Fact Sheet List of Agency Actions for Review* (Jan. 20, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/.
[5] *See*, The America First Policy Institute & the Life: Powered Project, Comment Letter on Deadline for Agencies to Propose Updates to National Environmental Policy Act Procedures, 86 FR 34,154 (June 29, 2021), https://www.regulations.gov/comment/CEQ-2021-0001-0011 (attached as Attachment A).
[6] *See*, The America First Policy Institute, the Life: Powered project, the Competitive Enterprise Institute, and Heritage Action, Comment Letter on National Environmental Policy Act Implementing Regulations Revisions, 86 Fed. Reg. 55757 (Nov. 21, 2023), https://www.regulations.gov/comment/CEQ-2021-0002-39376 (attached as Attachment B).

the legal and policy failures in the propagation of these rules in conjunction with the failures of the 2023 Proposal.

II. The Proposal does not properly implement the FRA.

In June of 2023, the FRA[7] became law, and it included the first legislative updates to NEPA in 50 years. This bipartisan action was an unprecedented recognition of our Nation's serious need for permitting reform. As a result of the FRA, the Biden Administration had to adjust its piecemeal plans on promised Phase 2 NEPA regulation changes. Therefore, CEQ's Proposal refers to itself as a "Bipartisan Permitting Reform Implementation Rule."[8] However, as these comments will outline, "Phase 2 Proposal" is a more apt description, as the improvements included in the FRA appear to be a late-stage addition rather than the driving force behind the extensive revisions in the Proposal.

The Biden Administration claimed in an accompanying press release[9] that this Proposal would "fully implement and build upon new permitting efficiencies directed by Congress under the Fiscal Responsibility Act of 2023." Yet, as these comments outline, both contentions are unsupported by the proposed regulations. The Proposal both fails to "fully" implement the congressional intent to increase permitting efficiencies with the passage of the FRA and works to "build upon" permitting *inefficiencies* begun by the Administration's rollback of the Trump Administration's 2020 Reform.

Thus, though CEQ's 2023 Proposal claims a congressional impetus, it does little to resolve the failings of the Delay and Phase 1 Rules. In fact, the 2023 Proposal reiterates and expands upon the rollbacks of critical 2020 Reform Rule modernizations that were included in the Phase 1 Rule. Further, the Phase 2 Proposal adds even more additional burdens that will serve to increase the extensive delays, excessive paperwork, and litigation risks that limit infrastructure improvements. These actions add complexities and burdens not required by and, in fact, contrary to the intent of the FRA.

However, several in Congress expressed a sense of betrayal with the Biden Administration's proposed rule. For example, House Committee on Natural Resources Chairman Bruce Westerman (R-Ark.) noted "Today's proposed rule is just another example of unchecked bureaucrats trying to force their radical agenda and burden Americans with red tape. While CEQ claims to focus on much-needed NEPA reforms, their actual proposed rule ignores the will of

[7] Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023).
[8] National Environmental Policy Act Implementing Regulations Revisions Phase 2, 88 Fed. Reg. 49924 (July 31, 2023).
[9] Press Release, The White House, *Biden-Harris Administration Proposes Reforms to Modernize Environmental Reviews, Accelerate America's Clean Energy Future, and Strengthen Public Input* (28 July 2023), https://www.whitehouse.gov/ceq/news-updates/2023/07/28/biden-harris-administration-proposes-reforms-to-modernize-environmental-reviews-accelerate-americas-clean-energy-future-and-strengthen-public-input.

Congress expressed in the Fiscal Responsibility Act (FRA) in many instances and instead opens future projects up to new litigation and extended delays."[10]

The 2023 Proposal includes required statutory language with improvements related to key areas such as agency coordination, presumptive page limits, and deadlines. However, the Proposal not only adds additional burdens outside of the FRA reforms but also limits the efficacy of the FRA reforms themselves. This limited implementation of the FRA reforms, combined with the other provisions of the Proposal, arguably aligns with Rep. Westerman's argument that the Phase 2 rule "ignores the will of Congress."

III. The Proposal limits the efficacy of FRA reforms.

For example, though the Proposal adopts FRA language regarding deadlines, CEQ continues to prioritize agency flexibility and Biden Administration priorities over efficiency.[11] For example, despite congressional directives regarding page limits, the Proposal aspires to "emphasize the important values served by concise and informative NEPA documents beyond merely reducing paperwork, such as …facilitating meaningful public participation."[12] Importantly, the Proposal insists on requirements "*beyond merely"* the congressionally-intended efficiencies. In this case, the Proposal specifically identifies weighing "meaningful public participation" when considering paperwork reduction. This will counter the effectiveness of delay-cutting measures. Importantly, these additional requirements increase litigation risk due to a lack of clarity regarding how to determine whether "public participation" has been sufficiently "meaningful." To address this concern, the initial permitting process becomes correspondingly more burdensome and complex. It is telling that even the sections that specifically address extensive paperwork prioritize other Biden administration priorities.

As a whole, the Proposal largely fails to implement paperwork limitations and deadlines in a meaningful way. Another example is the Proposal's response to the FRA exclusion of certain forms of financial assistance from the definition of major federal actions subject to NEPA. The FRA excluded "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

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[10] "Westerman Statement on Biden Administration NEPA Announcement." *House Committee on Natural Resources*, 28 July 2023. https://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=414713. Press release.

[11] *See, supra* note 6, at 11-14. The Phase 1 Proposal included the removal of the "ceiling provision" in which the reform rule indicated that agencies should not impose more burdensome requirements on project applicants beyond what the CEQ NEPA regulations indicate. This change allows additional burdens and complexities in the permitting process, as AFPI argued in joint comments, "expressly privileging acting agency 'flexibility' over 'costs and delays.'" This flies in the face of the Reform rule's intent to overcome the central challenge of an excessively lengthy and burdensome permitting process. The FRA had the same intent and codified key improvements to reduce delays.

[12] *Supra* note 8, at 49932.

such financial assistance or the effect of the action."[13] The Proposal, however, adopted a limited interpretation of this exclusion and explicitly seeks to include "circumstances where the agency could deny the financial assistance, in whole or in part, due to environmental effects from the activity receiving the financial assistance, or could impose conditions on the financial assistance that could address the effects of such activity."[14] This expansive interpretation limits the intended efficiency of the FRA. It will also make it much more difficult to turn federal funding for infrastructure, including Inflation Reduction Act funding touted by the Biden Administration, into project results.

Further, the Phase 2 Proposal expands the scope of reasonable alternatives, which the 2020 Reform Rule had limited to a reasonable number and the statutory jurisdiction of the lead agency. The Proposal goes beyond the FRA's discussion of reasonable alternatives, which required "a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal."[15] For example, expanding beyond the statute, the Proposal requires the agency to "Identify the environmentally preferable alternative or alternatives," citing consideration of "climate-change related" and "environmental justice" priorities.[16] As we outline later in this comment, these additional considerations add significant additional complexity, confusion, and delays to the permitting process.

IV. The Proposal reduces clarity and adds confusion on the purpose of NEPA analysis.

The additional burdens are extensive, far exceeding the rollbacks offered by the Phase 1 Rule and far outweighing any FRA-required improvements. A key example is the way in which the Phase 2 Proposal tries to establish NEPA as an "action-forcing" mechanism rather than a procedural one. It does so by removing references to the purely procedural nature of NEPA "because, while correct, CEQ considers that language to be an inappropriately narrow view of NEPA's purpose that minimizes some of the broader goals of NEPA …."[17]After obscuring the procedural nature of NEPA, CEQ builds on its expansive interpretation of the statute to increase requirements to consider key administration priorities.

In fact, extending the boundaries of NEPA regulations while acknowledging that 2020 limitations were in line with the statute is a theme throughout the regulations, reducing much-needed clarity in the permitting process in favor of a more expansive approach to regulatory authority. Take the CEQ proposal "to delete the sentence that NEPA 'does not mandate the form

[13] *Supra* note 7, at 45.
[14] *Supra* note 8, at 49962.
[15] *Supra* note 7, at 38.
[16] *Supra* note 8, at 49977.
[17] *Id*. at 49930.

or adoption of any mitigation' because this sentence is unnecessary and could mislead readers by not acknowledging that agencies may use other authorities to require mitigation."[18]

The Proposal then includes deeply concerning provisions to "clarify that any mitigation must be enforceable, such as through permit conditions or grant agreements, if an agency includes it as a component of a proposed action and relies on its implementation to analyze the action's reasonably foreseeable environmental effects" using authorities external to NEPA.[19] This provision significantly expands CEQ's regulatory requirements and agency involvement in the life of any proposed project that involves mitigation.

V. The Proposal increases project litigation risk.

Further, the Proposal also removes 2020 efforts to reduce litigation risk with the "exhaustion" principle,[20] which sought to limit litigation to comments submitted during public comment periods. The extensive litigation process, and additional processes to address litigation risk, add significant delays to the permitting process. Reforms to address these delays while maintaining public input and oversight are crucial. Instead, the Proposal returns the U.S. to the status quo of lengthy litigation, even following an affirmative decision from an increasingly extensive and lengthy federal permitting process. As discussed elsewhere in these comments, it is important to note that along with increasing litigation risk by reversing these critical reforms, the Proposal increases confusion and complexity throughout, increasing both litigation risk and delays as agencies anticipate risk.

VI. The Proposal's definition of "reasonably foreseeable" is inconsistent with established case law and congressional intent to increase permitting efficiency.

One element of the FRA was defining "reasonably foreseeable" impacts. The 2020 Reform standard of reasonably foreseeable impacts are those "that are reasonably foreseeable and have a reasonably close causal relationship" to a proposed action and provided much-needed clarity on limitations of effects analysis. As AFPI and others discuss extensively in comments on the Phase 1 rule,[21] this was consistent with the Supreme Court's decision in Department of Transportation vs. Public Citizen, 541 U.S. 752 (2004). However, the 2021 Proposal rejected the definition. As AFPI notes,

> In the 2021 Proposal, CEQ misunderstands the key insight of Public Citizen. It is true, as CEQ notes, that agencies are free to consider factors in addition to those that NEPA requires when conducting an environmental review. But CEQ was 'established by NEPA with authority to issue regulations interpreting it,' 541 U.S. at 757, not with authority to issue regulations expanding on NEPA's requirements for a legally sufficient EIS… The

[18] *Id.* at 49963.
[19] *Id.* at 49953.
[20] *Id.* at 49931.
[21] *Supra* note 6, at 18.

> Supreme Court ruled that 'under NEPA and the implementing CEQ regulations, the agency need not consider effects' beyond those that bear a reasonably close causal relationship to the alleged cause. Id. at 770.

Therefore, the CEQ Phase 1 rule is inconsistent with the case law, as well as returning additional confusion and burdens to the permitting process. Without clear commonsense limits to the effects that agencies should assess under NEPA regulations, the process becomes much more complex and unwieldy, and increases litigation risk.

The FRA codified language on "reasonably foreseeable environmental impacts." However, the Phase 2 Proposal continued *and expanded* the Phase 1 rule's problematic understanding of foreseeable impacts. This expanded definition runs contrary to FRA intent to increase permitting efficiencies.

In fact, the Phase 2 Proposal not only continues the Phase 1 override of the Reform limits on impacts to those that are "reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives" from the 2020 rule, but it also continues the required analysis of impacts as "global, national, regional, local" and "short and long-term"[22] as well as "direct," "indirect," and "cumulative."

VII. The Proposal codifies expansive climate change and environmental justice considerations to unduly burden needed infrastructure and increases confusion, complexity, and delay.

In the proposal, CEQ codifies the consideration of climate change and environmental justice considerations for the first time, but neither are mentioned in the FRA. Though these considerations were not excluded from prior NEPA analyses, the language in the rule adds a series of additional challenges throughout the NEPA permitting processes for potential projects across the board, including increased litigation risk.

The Proposal broadly defines "environmental justice" for the first time as "the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision making and other Federal activities that affect human health and the environment so that people: (1) Are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers…."[23] This definition is expansive and poorly defined, meaning that the extensive requirements for its consideration throughout the proposal will correspondingly increase project complexity and litigation risk.

[22] *Supra* note 8, at 49935.
[23] *Id*. at 49986.

The Proposal includes additional regulatory requirements to include broad environmental justice considerations, for example, when considering "meaningful public participation," an already ill-defined requirement as discussed earlier in this comment. For instance, the 2023 Proposal includes additional public engagement requirements such as an emphasis on earlier engagement, particularly with indigenous groups, highlighting the benefits of "Indigenous Knowledge," which the rule does not define.[24] This will add to further confusion and litigation risk.

Another example is the Proposal's encouragement that agencies "to incorporate, where appropriate, mitigation measures addressing a proposed action's significant adverse human health and environmental effects that disproportionately and adversely affect communities with environmental justice concerns."[25] We discussed problems with the Proposal's mitigation inclusions earlier in this comment, and the addition of ill-defined environmental justice concerns only add to complexities, confusion, and delays. Put simply, these provisions add to the complexities of the NEPA process while encouraging its use in promoting the Biden Administration's expansive environmental justice priorities.

Critically, it is worth noting that the Biden Administration's environmental justice agenda has catered to build-nothing environmentalism. For example, the White House Environmental Justice Advisory Council (WHEJAC) lists not only "fossil fuel procurement, development, infrastructure repair that would in any way extend lifespan or production capacity" but also "Highway expansion" and "Road improvements or automobile infrastructure, other than electric vehicle charging stations" as projects that "Examples of Types of Projects that Will Not Benefit a Community."[26] The White House has refused to formally disassociate itself from this report and state that they disagree with the WHEJAC recommendations.

The Proposal also requires extensive new climate change considerations. For example, in relation to effects, the Proposal requires "that the discussion of environmental consequences in an EIS must include any reasonably foreseeable climate change-related effects, including effects of climate change on the proposed action and alternatives."[27] The codification of "global" climate change effects consideration significantly increases litigation risk and correspondingly increases front-end delays as agencies try to make documentation litigation-proof.

Further, as we discuss in the following section, the Proposal seeks special carve-outs for Administration-favored projects such as renewables, demonstrating the burdensome nature of the proposed processes that it hopes to maintain for disfavored projects like fossil fuel production.

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[24] *Id.* at 49941.
[25] *Id.* at 49954.
[26] White House Environmental Justice Advisory Council. *Final Recommendations: Justice40 Climate and Economic Justice Screening Tool & Executive Order 12898 Revisions* (May 21, 2021) https://www.epa.gov/sites/default/files/2021-05/documents/whiteh2.pdf.
[27] *Supra* note 8, at 49950.

This runs contrary to congressional intent to efficiently assess the environmental viability of all projects, including the fossil fuel projects that remain essential to the prosperity and security of our Nation. Essentially, this Proposal seeks to impose Biden Administration climate policy priorities through the permitting process without congressional authorization.

VIII. The Proposal's carve-outs for projects favored by the Biden Administration reveal the policy and legal failings of the proposed rule.

As we have outlined, additional burdens of the permitting process under the 2023 Proposal are extensive. The Proposal is much more in line with bloated bureaucracy and build-nothing environmentalism than the Biden Administration's Build Back Better promises. In telling recognition of the inefficiencies of the proposed permitting updates, the Proposal attempts carve-outs for the Biden Administration's favored projects, including renewable energy. In doing so, it looks for ways to exempt favored projects from standard processes, rather than entrusting them to the permitting process under which other projects are required to be assessed.

It is not enough to add additional regulatory criteria for analysis designed to favor projects such as renewable energy. Recognizing that even favored projects will be subject to overly burdensome restrictions, the Proposal designs exceptions to favor renewable energy production while adding regulatory barriers for disfavored fossil fuel and transportation projects.

For example, under the proposed regulations, there are several attempts to exempt renewable energy projects from the requirement to develop an environmental impact statement (EIS). The proposal cites, "for example, an agency should consider short-term construction-related GHG emissions from a renewable energy project in light of long-term reductions in GHG emissions when determining the overall intensity of effects. In this situation, the agency could reasonably determine that the climate effects of the proposed action would not be significantly adverse, and therefore an EIS would not be required."[28] Thus, the rule attempts to provide agency discretion on what effects are "significantly adverse," rather than provide the full analysis of an EIS. This is problematic.

Importantly, established precedent rejects the determination that an EIS is not required in cases where, on balance, the impacts of a proposed action are beneficial. As noted in the decision of Friends of Fiery Gizzard v. Farmers Home Administration[29]:

> This is not to say, of course, that the benefits of the project would justify a finding of no significant impact if the project would also produce significant adverse effects. Where such adverse effects can be predicted, and the agency is in the position of having to balance the adverse effects against the projected benefits, the matter must, under NEPA, be decided in light of an environmental impact statement. *Sierra Club v. Marsh*, 769 F.2d 868, 880 (1st Cir. 1985). Cf. 40 C.F.R. Sec. 1508.27(b) (1), which says that '[a]

[28] *Id.* at 49936.
[29] *Friends of Fiery Gizzard et al., v. Farmers Home Administration et al.,* 61 F.3d 501 (6th Cir. 1995).

significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.'

Yet, the Proposal seeks to determine that the impacts of a proposed project are not significantly adverse *because* of the proposed benefits, which are separated temporally from the harms. This is not consistent with the court's interpretation of the information required under NEPA.

Another way in which the Proposal attempts carve-outs is through its regulations of Categorical Exclusions (CEs). CEs are extremely beneficial to permitting efficiency. The FRA sought to expand the use of categorical exclusions to streamline the NEPA process by codifying the 2020 Reform Rule's provision that agencies can adopt applicable CEs from other agencies. The Proposal includes this important language; however, it also includes its first regulatory definition of the "extraordinary circumstances" that "serve to identify actions within a category of actions the effects of which exceed those normally associated with that category of action and therefore, do not fall within the bounds of the CE."[30] The definition was previously determined by individual agencies.

The new CEQ definition, which would apply to all agencies, includes "potential disproportionate and adverse effects on communities with environmental justice concerns, potential substantial effects associated with climate change, and potential adverse effects on historic properties or cultural resources."[31] This additional language serves as an attempt to prevent the use of CEs to expedite traditional energy or other politically disfavored infrastructure projects, while preserving the modernization for preferred projects such as wind and solar. However, it is important to note that the success of the preservation of the CE efficiencies for favored projects remains to be seen, as the additional language introduces barriers that could affect them as well. Instead, CEQ should properly implement the FRA's intent to expand the use of CEs without the introduction of broad, burdensome barriers or targeting of disfavored projects.

Further, the Phase 2 Proposal proposes allowing for agencies to agencies to develop "innovative approaches to comply with NEPA and the regulations in order to address extreme environmental challenges."[32] These environmental challenges, which are to include "environmental justice" and "climate change" concerns, would allow agencies to propose alternative procedures for particular projects. However, though this is a clear recognition that the NEPA regulations as proposed present excessively large barriers to efficient permitting, the "innovative approaches" that agencies would be empowered to propagate have yet to be developed. Thus, the success of CEQ's attempts to liberate politically favored projects from the

[30] *Supra* note 8, at 49937.
[31] *Id*. at 49987.
[32] *Id*. at 49957.

problems introduced by their own processes also remains to be seen when it comes to this proposed mechanism.

As we outline in the following section, the Proposal also proposes to incorporate all or part of the CEQ's 2023 GHG Guidance, which similarly betrays its own failures with problematic preferential treatment for Biden Administration-favored projects. Further, as we also outline below, both the 2023 Proposal and its proposed inclusion of the 2023 Guidance raise issues under the major questions doctrine.

IX. CEQ should not codify its 2023 GHG Guidance.

The Phase 2 Proposal also "particularly invites comment on whether it should codify any or all of its 2023 GHG Guidance, and, if so, which provisions of part 1502 or other provisions of the regulations CEQ should amend. CEQ proposes to incorporate some or all of the 2023 GHG guidance, which would require making additional changes in the final rule to codify the guidance in whole or part, as is or with changes, based on the comments CEQ receives on this proposed rule."[33] The 2023 Guidance[34] and its proposed inclusion in the Phase 2 Proposal represent an important concession on behalf of the Biden Administration that the level of barriers that they have placed in the permitting process directly conflicts with their promises of development.

CEQ should not codify the 2023 GHG Guidance. The 2023 Guidance presents several key concerns, some of which we address here. While adopting the climate alarmist's characteristic urgency, the Guidance expands recommended analysis requirements that will contribute to project delays and build-nothing environmentalism. The Guidance builds on some of the concerns discussed earlier in this comment as relates to the meaning of direct and indirect impacts for analysis and the importance of causal relationship between an action and its effects, continuing the prior failure of CEQ to recognize the insights of Public Citizen. Further, the Guidance includes using in most cases the Social Cost of Carbon to communicate impacts, which raises serious concerns given the failings of that measure. It also encourages agencies to "mitigate GHG emissions associated with their proposed action to the greatest extent possible."[35] The guidance also suggests analysis of "full burn"[36] scenario for fossil projects regardless of if that is foreseeably the case. This expansive "upward bound" for analysis and action is a common theme and is extremely detrimental to permitting efficiency and effectiveness.

The Guidance begins with the claim that "the United States faces a profound climate crisis and there is little time left to avoid a dangerous—potentially catastrophic—climate trajectory." It follows that "Given the urgency of the climate crisis and NEPA's important role in providing critical information to decision makers and the public, NEPA reviews should quantify proposed actions' GHG emissions, place GHG emissions in appropriate context and disclose

[33] *Id.* at 49945.
[34] National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196 (Jan. 9, 2023).
[35] *Id.* at 1197.
[36] *Id.* at 1205.

relevant GHG emissions and relevant climate impacts, and identify alternatives and mitigation measures to avoid or reduce GHG emissions. CEQ encourages agencies to mitigate GHG emissions associated with their proposed actions to the greatest extent possible, consistent with national, science-based GHG reduction policies established to avoid the worst impacts of climate change."[37] The guidance follows by enumerating these expansive analyses required to meet the climate challenge, including the expansive definition of impacts analysis. "Urgency" seems directly contrary to the levels of analysis recommended by the guidance.

X. The 2023 GHG Guidance's preference for projects favored by the Biden Administration similarly reveals the failings of the Guidance.

The Guidance attempts to overcome its expansive analysis requirements discussed above by placing stark contrasts between its treatment of renewable and traditional energy projects, though in doing so it operates more in examples than concrete standards. It argues that the "rule of reason and the concept of proportionality caution against providing an in-depth analysis of emissions regardless of the insignificance of the quantity of GHG emissions that the proposed action would cause."[38] For example, the Guidance posits that:

> Agencies should generally quantify projected GHG emission reductions, but may apply the rule of reason when determining the appropriate depth of analysis such that precision regarding emission reduction benefits does not come at the expense of efficient and accessible analysis. Absent exceptional circumstances, the relative minor and short-term GHG emissions associated with construction of certain renewable energy projects, such as utility-scale solar and offshore wind, should not warrant a detailed analysis of lifetime GHG emissions. As a second example, actions with only small GHG emissions may be able to rely on less detailed emissions estimates.[39]

Interestingly, the temporal impacts of frontloaded GHG impacts are ignored in this analysis, despite the "urgency" of the "crisis." Further, the limited nod to efficiency with the renewable exemption comes in contrast to the Guidance's treatment of fossil fuels.

A concerning example is the Guidance's use of natural gas infrastructure as an example for reasonably foreseeable indirect emissions that need to be accounted for under the NEPA process. CEQ asserts that "natural gas pipeline infrastructure creates the economic conditions for additional natural gas production and consumption, including both domestically and internationally, which produce indirect (both upstream and downstream) GHG emissions that contribute to climate change." However, this assertion invites blanket inclusion of expansive downstream and upstream effects analysis for natural gas infrastructure in a manner that has not been supported by the courts. For example, the District of Columbia in Birckhead v. FERC held

[37] *Id.* at 1197.
[38] *Id.* at 1202.
[39] *Id.*

that it is "too far" to "claim emissions from downstream gas combustion are, as a categorical matter, always a reasonably foreseeable indirect effect of a pipeline project."[40]

The extensive GHG analysis in the guidance would increase the length and complexity of agencies' analyses in the permitting process, in fact, beyond what courts have determined. It is unsurprising then, that the Biden Administration simultaneously looks for ways to create efficiencies for their promised projects. However, as detailed below, this approach is legally infirm.

XI. The Proposal's systematic preferencing of projects favored by the Biden Administration projects is problematic under the major questions doctrine.

The 2023 Proposal's systematic preferencing of renewable energy projects and additional burdens to traditional energy projects is arguably a violation of the major questions doctrine as outlined in West Virginia vs. EPA.[41] There is no distinguishing language within the NEPA statute that allows for favored treatment of certain types of projects within similar categories of projects, including the Biden Administration's attempt to use carve-outs and alternative processes to shift sources of power generation to align with its climate goals that have failed to achieve congressional authorization. The Proposal's inclusion of favored treatment for renewables by allowing them to be permitted through different procedural processes raises major questions concerns. At no point did Congress provide for discrimination against fossil fuel projects in a manner not based on the merits of the projects but by the creation of separate processes and standards to achieve the Biden Administration's goals. These concerns would be further strengthened by the inclusion of all or part of the 2023 Guidance.[42]

It is worth noting that the FRA also permitted the Mountain Valley Pipeline, indicating that blocking fossil fuel projects was not within the scope of Congressional intent of the FRA. The Proposal not only adds extensive burdens, but it also stands on legally infirm ground, attempting to implement the Biden Administration's priorities through the regulatory process. This will be profoundly detrimental to American prosperity, energy independence, and economic growth, all of which depend on an efficient, predictable permitting process. Further, though the carve-outs raise legal problems, given the additional burdens, confusion, and complexities the Proposal adds to the permitting process, their success in successfully accelerating favored projects to swift completion remains in serious doubt. Thus, favored projects likely still face significant delays, limiting American development across the board.

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[40] *Birckhead v. Fed. Energy Reg. Comm'n*, 925 F.3d 510, 519 (D.C. Cir. 2019).
[41] *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022).
[42] *E.g*, *Examining Systemic Government Overreach at CEQ*, Hearing on Oversight Before the Natural Resources Subcommittee on Oversight and Investigations, (Sept. 14, 2023) (statement of Mario Lewis, Jr., Senior Fellow in Energy and Environmental Policy, Co, Competitive Enterprise Institute), https://docs.house.gov/meetings/II/II15/20230914/116361/HHRG-118-II15-Wstate-LewisM-20230914.pdf.

CONCLUSION

Bureaucratic barriers not only slow necessary infrastructure improvements and economic progress, but they also advantage larger actors who have the time and resources to navigate the lengthy processes, often spanning years across multiple federal agencies. The adverse impact on smaller businesses further stifles competition and slows innovation, which is essential to environmental progress. There has been increasing recognition on both sides of the aisle that predictable, efficient permitting processes are needed to advance American infrastructure and economic interests.

In the statute, NEPA aims "to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."[43] This represents a critical understanding from Congress that environmental progress and human flourishing, including economic advancements, must go hand in hand. However, over time the bureaucratic build-up surrounding the statute has become a vehicle for what is known as "denial by delay" environmentalism, meaning projects languish rather than receive a decision in a reasonable timeframe—even if the answer is that a project is not environmentally viable as proposed. Critically, these delays extend across projects—including renewable and traditional energy, as well as projects such as roads and bridges.

The Proposal's attempts at regulatory carve-outs for favored projects are an admission of the manner in which the process has been fundamentally broken by the Biden Administration. The Proposal works to favor renewable projects and saddles fossil fuel and transportation projects with additional burdens, including environmental analysis, stakeholder engagement, and legal uncertainty. However, given the extensive provisions in the Proposal and the limitations of its carve-outs, controversial projects across the board likely remain beholden to a "build-nothing" agenda.

Real reform would mean that the necessary environmental protections and accompanying analysis could be consistently observed in an efficient, transparent, and predictable manner with clear and well-reasoned exceptions. Unfortunately, the latest Proposal attempts to pick winners and losers in American infrastructure based on political considerations rather than the intent of statute and the democratic will of the American people. The resultant Proposal represents a continued commitment to complexity, confusion, and denial by delay. CEQ's contention that it "proposes these changes to better align the provisions with CEQ's extensive experience implementing NEPA"[44] offers little solace to Americans who know significant reform is required to liberate the U.S. from years of red tape and get Americans building again.

[43] 42 U.S.C. § 4331.
[44] *Supra* note 8, at 49924.

It is telling that the Proposal calls to "remove 'of Americans' after 'present and future generations'" in the discussion of the human environment. [45] Though proponents argue that this better aligns with broader goals, it actually betrays the way in which the abuse of the statute has become a weight on American innovation and growth. It is this American leadership that drives environmental protection and advancements. Instead, the bureaucracy ties our hands, crippling our energy and infrastructure development while our adversaries build and pollute.

Americans need meaningful permitting reform. CEQ should abandon this disastrous proposal in favor of real modernization that prioritizes environmental protections and needed efficiency.

[45] *Id.* at 49961.

ATTACHMENT A

Comments of AFPI & Texas Public Policy Foundation's Life:Powered on CEQ's interim final rule, 86 Fed. Reg. 34,154 (June 29, 2021), delaying certain deadlines in the Reform Rule, filed July 29, 2021, and docketed as CEQ-2021-0001-0011

July 29, 2021

VIA ELECTRONIC FILING

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Washington, DC 20503

RE: Deadline for Agencies To Propose Updates to National Environmental Policy Act Procedures, 86 Fed. Reg. 34154, June 29, 2021, [Docket No. CEQ-2021-0001]

Ms. Coyle:

Please see the below comments from the America First Policy Institute and the Life:Powered project Re: Deadline for Agencies To Propose Updates to National Environmental Policy Act Procedures, Docket No. CEQ–2021–0001. Thank you for the opportunity to comment.

I. INTRODUCTION

In an effort to nullify a valid regulation without proceeding through the appropriate notice and comment process, the Council on Environmental Quality (CEQ) has taken an action with potential procedural and substantive legal defects that will thwart the implementation of a major reform action that CEQ took only 1 year ago. On June 29, 2021, CEQ published an "interim final rule" in the Federal Register (the Delay Rule). The Delay Rule extends by 2 years (from September 2021 to September 2023), a deadline in CEQ's 2020 Reform Rule. The deadline is for agencies to propose new regulations to implement reforms to their functions under the National Environmental Policy Act (NEPA) to correspond to the reforms made by CEQ in the Reform Rule. In using the "interim final rule" mechanism, CEQ did not provide the public with notice or an opportunity to comment before it extended this deadline. In the same notice announcing the extension, however, it also solicited comment from the public after the fact. It appears this deadline delay is simply an attempt to gut the implementation of the Reform Rule, buying CEQ time to change it through a forthcoming new rulemaking process while in the meantime preventing the Reform Rule's reforms from fully taking place. By eliminating the need for the various federal agencies promptly to conform to the Reform rule, CEQ is depriving Americans of the benefit of these crucial reform regulations without engaging in notice and comment before doing so and without providing a reasoned basis for doing so.

The Biden Administration is free to put its own gloss on the regulations implementing NEPA. To do so, it can attempt to revise or repeal the existing Reform Rule. But any Administration must observe the legal requirements for doing so, it must give adequate explanations for doing so, and while that Rule remains on the books, it must abide by it.

CEQ has delayed by 2 years a deadline for a key step in implementing the Rule's reforms. The NEPA Reform Rule's 1-year deadline for agencies to begin their part in the reform process was adopted through full notice-and-comment rulemaking procedures, with ample opportunity for public input and policy deliberation. The Biden Administration's Delay Rule kicks this deadline out another 2 years, without notice or comment, and with no valid reason given.

The Delay Rule harms the people of the United States by depriving them of needed infrastructure reforms and erodes the rule of law by altering a duly promulgated regulation in an arbitrary and capricious manner and without observing procedures required by law. CEQ must reverse course, abandon its illegal Delay Rule, and in the future only pursue whatever policy changes it may wish through the appropriate and required procedures. Until and unless CEQ alters the Reform Rule through proceedings that are both rationally grounded and legally compliant, it and the Administration as a whole must abide by that Rule and its binding and badly needed reform provisions and procedures.

Section II of these comments explains who we, the commenters, are and our interest in NEPA reform. Section III provides background concerning the Reform and Delay Rules and the policy problems that the Reform Rule addressed. Section IV analyzes the Delay Rule's deficiencies, both (A) procedural (failure to take notice and comment before acting) and (B) (arbitrary and capricious).

II. AFPI AND LIFE:POWERED

The America First Policy Institute (AFPI) is a 501(c)(3) non-profit, non-partisan research institute. AFPI exists to conduct research and develop policies that put the American people first. Our guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do.

One of AFPI's core priorities is ensuring that America is a nation that can build and prosper. That's AFPI's public policy interest in CEQ's 2020 NEPA Reform Rule, which is instrumental to a prosperous America. These comments explain why that Rule's reforms are needed and why CEQ's "interim final rule" delaying a key part of the Reform Rule is problematic as a matter of law and policy. AFPI supports the implementation of the Reform Rule as it was originally issued, including its carefully chosen 12-month deadline for other agencies to propose their corresponding reforms.

The Life:Powered project is a national initiative of the Texas Public Policy Foundation, a 501(c)(3) non-profit and non-partisan research institute, to raise America's energy IQ. Our primary objective is to advocate for energy and environmental policies that promote economic freedom and advance the human condition.

The growing abuse of NEPA to arbitrarily restrict infrastructure development and promote anti-growth agendas is why the 2020 NEPA Reform Rule was a significant advance in this policy arena. Environmental laws should exist to serve humanity, not the other way around. Delaying the implementation of the Reform Rule will delay the benefits the rule can provide while serving no objective other than giving the new administration time to figure out how to change it. This delay is illegal as implemented because it is arbitrary and capricious, and procedurally deficient, and it should not stand.

III. Background: 2020 Reform Rule and 2021 Delay Rule

A. 2020 Reform Rule Background

NEPA of 1969, 42 U.S.C. § 4342 *et seq.*, requires federal agencies to consider whether their major actions will have significant environmental impacts. If they will, the agency must conduct a study of those impacts. As CEQ observed in proposing and finalizing the Reform Rule, over the half-century since NEPA was enacted, and the more than 40 years since CEQ first issued implementing regulations, "the NEPA process has become increasingly complicated and can involve excessive paperwork and lengthy delays." 85 Fed. Reg. 43,304, 43,305/2 (July 16, 2020) (final Reform Rule); *see also id.* at 43,305/2-3; 85 Fed. Reg. 1,684, 1,687/3 (Jan. 10, 2020) (proposed Reform Rule) ("[T]he process for preparing [Environmental Impact Statements] is taking much longer than CEQ advised, and . . . the documents are far longer than the [prior] CEQ regulations and guidance recommended.") (citing CEQ studies demonstrating that only a quarter of NEPA analyses take less than 2.2 years and 25 percent take more than 6 years, contrasted to CEQ's expectation in 1981 that even complex projects should not require more than 1 year for NEPA analysis).

In 2009, then-Vice President Biden visited a bridge in Middletown, Pennsylvania, for a groundbreaking ceremony to promote federal funding from the American Recovery and Reinvestment Act. He discovered that the bridge was not "shovel ready" due to issues with the permits. This problem of continuing delays for infrastructure projects would endure for another decade.

In the final Reform Rule, CEQ concluded that "[a]lthough other factors may contribute to project delays, the frequency and consistency of multi-year review processes [under NEPA] for projects across the Federal Government leaves no doubt that NEPA implementation and related litigation is a significant factor." 85 Fed Reg. at 43,305/3. CEQ noted that the average NEPA environmental analysis is now some 660 pages in length, with a 25 percent of analyses 748 pages or longer, contrasting this with CEQ's expectations in its original implementing regulations, which anticipated that the typical analysis would be 150 pages long. *Id.* at 43,305/3-43,306/1. CEQ diagnosed a key aspect of the problem: agencies over the decades had responded to litigation risk "by generating voluminous studies analyzing impacts and alternatives well beyond the point where useful information is being produced and utilized by decision makers." *Id.* at 43,305/3.

To address these issues, in 2020, CEQ proposed the first comprehensive update to its regulations implementing NEPA since those regulations were initially promulgated in 1978. CEQ received more than a million comments on its proposed regulations. Later in 2020, CEQ finalized the rule, incorporating the feedback from comments, and revised its implementing regulations to better implement NEPA, serve more faithfully the original purpose of the 1978 regulations, and bring increased rationality and reduce unnecessary complexity in the thicket of complications that had accrued over the decades. Among other reforms, the Reform Rule revised CEQ's NEPA implementing regulations to establish presumptive time and page limits to the review process, enhance interagency cooperation and avoid unneeded reduplication of effort, and set a 2-year goal for completion of environmental review. *See* 85 Fed. Reg. at 43,313/2 *et seq.* CEQ also eliminated from its regulations terms (such as "indirect" and "cumulative" effects) that do not appear in the NEPA statute and that CEQ determined had contributed to "confusion and unnecessary litigation," *see id.* at 43,343/2. Its policy goal was "to focus agency time and resources on considering whether the proposed action causes an effect rather than on categorizing the type of effect." *Id.* at 43,343/3.

CEQ's regulations provide the framework for every other agency's own procedures to govern their implementation of NEPA. The Reform Rule included a requirement for each agency to "develop or revise, as necessary, proposed procedures to implement" CEQ's NEPA regulations, "including to eliminate any inconsistencies" therewith. 85 Fed. Reg. at 43,372/2 (codified at 40 CFR 1507.3(b)). The Reform Rule set a deadline for these proposals of September 14, 2021 (a year after the effective date of the Reform Rule), or 9 months after the creation of a new agency, whichever comes later. (These comments will refer to this as "the deadline" or "the 12-month deadline".)

Of the multiple legal challenges to the rule, the most significant was in the United States District Court for the Western District of Virginia. The Court denied the plaintiffs' motion for a preliminary injunction on September 11, 2020, and the Rule took effect three days later. On June 21, 2021, the court dismissed the suit for lack of jurisdiction. *Wild Virginia v. CEQ*, No. 20-45 (W.D. Va. filed July 29, 2020), ECF Nos. 92, 155.

B. Current Administration and 2021 Delay Rule Background

The Biden Administration has sent multiple signals that it does not support the Reform Rule and intends significantly to revise or repeal it. As the Delay Rule recites, a "White House Fact Sheet" officially issued on the Biden Administration's first day flagged the Reform Rule for review, *see* 86 Fed. Reg. at 34,155/2 & n.9. (Notably, the Biden transition had flagged the Reform Rule, among other actions, even before the Administration officially began.) In a declaration submitted to support its motion for remand of the Reform Rule without vacatur, CEQ told the district court that it "has substantial concerns" about the Reform Rule and its effects and that it "has commenced a comprehensive reconsideration" of the Rule. Declaration of Matthew Lee-Ashley, *Wild Virginia v. CEQ*, No. 20-45 (W.D. Va. filed Mar. 17, 2021), ECF No. 145-1, at 3, 5.

On April 16, 2021, Interior Secretary Deb Haaland issued Secretarial Order No. 3399, *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process*, § 5(a) ("Bureaus/Offices will not apply the 2020 Rule in a manner that would change the application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect on September 14, 2020. . . . If Bureaus/Offices believe that the Department's NEPA regulations irreconcilably conflict with the 2020 Rule, they will elevate issues to the relevant Assistant Secretary and to CEQ."). This approach at Interior is directly contrary to that taken in the Reform Rule, which the Delay Rule did not alter: "Where existing agency NEPA procedures are inconsistent with the regulations in this subchapter, the regulations in this subchapter shall apply . . . unless there is a clear and fundamental conflict with the requirements of another statute." 40 CFR 1507.3(a). (Tellingly, avoiding or eliminating this type of confusion and conflict between CEQ's regulations and other agencies' was a key aim of the Reform Rule's inclusion of the requirement that other agencies revise their NEPA procedures.)

On June 11, 2021, the Biden Administration released its Spring 2021 Unified Regulatory Agenda. This projected three actions relevant to the Reform Rule: the Delay Rule (which would be issued at the end of that month); a "Phase I" rulemaking to propose "narrow" changes to the Reform Rule (proposal projected for July 2021); and a "Phase II" rulemaking to propose "broader" changes (proposal projected for November 2021).

On June 29, 2021, CEQ published an "interim final rule" in the *Federal Register*. *Deadline for Agencies To Propose Updates to National Environmental Policy Act Procedures*, 86 Fed. Reg. at 34,154 (June 29, 2021) (the Delay Rule). This action extended the deadline for agencies to propose NEPA reforms to implement NEPA and the Reform Rule from 12 months following the effectiveness of the Reform Rule (or September 14, 2021) to 3 years after that date (or September 14, 2023). *See id.* at 34,154/2, 34,158/2. The action was not preceded by public notice and opportunity for comment, although CEQ did solicit comment after the fact, *id.* at 34,154/2.

IV. Analysis of the Delay Rule

The Delay Rule does not even acknowledge the Reform Rule's primary motivation: to remove unneeded delays, complexities, and burdens associated with the NEPA process. The Delay Rule does not on its face depart from the Reform Rule's view of the world or from its reasoning for choosing a new policy approach to NEPA implementation. While the Delay Rule raises many doubts and concerns, it makes no definitive statements in this regard; it does not explain whether it disagrees with the Reform Rule's view that the pre-2020 NEPA process had become in many instances unduly complex and burdensome; it shows no substance of what CEQ's preferred alternative approach to NEPA implementation now is. All the Delay Rule does is delay the timeline under which the benefits of the Reform Rule would more fully flow to the American people through its implementation by other agencies.

As discussed below, CEQ's failure to conduct any substantive analysis specifically regarding the 12-month deadline is a major legal defect in the Delay Rule. But the Delay Rule's broader silence on the Reform Rule's policy goals illustrates how the Delay Rule replaces a carefully calibrated policy structure with one that only causes further delay and confusion. Under the Reform Rule, other agencies were required to propose their corresponding NEPA reforms no later than September 2021. CEQ selected this deadline, as discussed below in more detail, to balance avoiding disrupting and overburdening agency activities against the need to expeditiously achieve consistency in implementing NEPA reforms across the executive branch.

Now, with the deadline abruptly extended to September 2023 alongside indications that CEQ intends (unspecified) changes to the underlying Reform Rule, project proponents, and acting agencies are left uncertain as to what regulation or regulations govern and will govern review of key infrastructure projects and other major federal actions. This will deter American companies, American investors, and local American governments from planning, building, and repairing in this country. It will stifle American employment and hurt the competitiveness of American industry to the extent NEPA review is necessary before key authorizations or funding can issue. It leaves the Reform Rule's work unfinished, while CEQ "embarks on [a] multiyear voyage of discovery" in its intended attempts to revise that Rule. *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 328 (2014). And it does this without enunciating any clear policy reason for doing so, let alone for ignoring the policy problem that led to the Reform Rule in the first place.

As an initial matter, the Delay Rule does not cite any statutory authority. It implicitly depends on the same authority that CEQ used to issue the Reform Rule in the first instance, and it is bound by all the same procedural and substantive legal requirements. *See, e.g.*, *Clean Air Act Council v. Pruitt*, 862 F.3d 1, 8-9 (D.C. Cir. 2017) ("Agencies obviously have broad discretion to reconsider a regulation at any time. To do so, however, they must comply with the Administrative Procedure Act . . . .").

The Delay Rule violates the requirements of the Administrative Procedure Act (APA) in two main respects: (A) it was not preceded by public notice and solicitation of comment, and (B) it is arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A), (D) (courts shall hold unlawful and set aside agency action that is arbitrary and capricious or "without observance of procedure required by law").

A. The Delay Rule Violates the APA's Notice and Comment Requirement

CEQ offers two justifications for not soliciting public comment before issuing the Delay Rule. *First*, CEQ claims the Delay Rule is exempt from the APA's and comment requirements because it is a rule "of agency organization, procedure, or practice," 86 Fed. Reg. at 34,156/1; *see* 5 U.S.C. § 553(b)(A). *Second*, in the alternative, CEQ purports to find "good cause" for issuing the Delay Rule without first taking comment, 86 Fed. Reg. at 34,156/2; *see* 5 U.S.C. § 553(b)(B). CEQ is wrong on both points.

(i) The Delay Rule Is Not Merely an Internal Rule

CEQ characterizes the Delay Rule and the underlying deadline in the Reform Rule that it extends as "procedural"; "purely procedural,"; of "no substantive effect,"; and "merely establish[ing] an internal deadline." 86 Fed. Reg. at 34,156/1-2. It is on this basis that CEQ asserts that "amending that deadline fits within the category of procedural rules exempted from notice-and-comment rulemaking." *Id.* at 34,156/2. CEQ's kaleidoscope of characterizations cannot obscure the fact that the Delay Rule is not subject to this exception from the notice and comment requirement. The Delay Rule (and the deadline it delays) does impact parties outside the federal government, and it disturbs a specific policy and value judgment that the Reform Rule made, and CEQ's invocation of this exemption is improper.

Without other agencies revising their NEPA regulations where necessary to ensure conformity with the Reform Rule and the underlying statute, outside parties who need a major federal action to undertake or carry out a project will be left in confusion as to what regulations will govern NEPA analysis in their situation—the Reform Rule? The other agency's regulations? This confusion is exacerbated by moves such as the Interior Secretary's Order discussed above. Such confusion is one reason why CEQ's Reform Rule required agencies to undertake revisions to their NEPA procedures and gave them a deadline to do so. Eliminating this confusion is necessary to realize the full benefits of the Reform Rule. Until such time as CEQ may depart from the Reform Rule in a legally sound way, it remains the binding policy of the federal government.

CEQ further asserts in this context that delaying the deadline "does not encode a substantive value judgment . . . but rather merely avoids . . . wasted resources," 86 Fed. Reg. at 34,156/1 (internal quotation marks and alteration omitted) (citing *Public Citizen v. Dep't of State*, 276 F.3d 634, 641 (D.C. Cir. 2002)). Not so. As discussed in more detail below in the *Fox* analysis, the Reform Rule selected a 12-month deadline through an express balancing of competing values, considering the burden on and disruption to agencies but also the need for consistency in the performance of their duties under NEPA. *See* 86 Fed. Reg. at 43,340/2 (final rule) ("a balance between minimizing the disruption to ongoing environmental reviews while also requiring agencies to revise their procedures in a timely manner to ensure future reviews are consistent with the final [Reform] rule."). That is CEQ exercising judgment, and it can't be separated from the policy choices and value judgments of the Reform Rule as a whole, of which this deadline was a functional part. The 12-month deadline is not a meaningless floating target with no real-world impact and no underlying policy choice. That is why CEQ must observe notice-and-comment requirements before altering it.

(ii) CEQ Has Not Shown "Good Cause" for Not Taking Comment Before Acting

Perhaps signaling a lack of faith in its argument that the Delay Rule is merely an internal procedural rule, CEQ makes a fallback argument: it claims to have had "good cause" to have forgone notice and comment before issuing this 2-year delay. 86 Fed. Reg. at 34,156/2. The APA provides that an agency may be exempt from notice and comment requirements if it "for good cause finds . . . that notice and

public procedure . . . are [1] impracticable, [2] unnecessary, or [3] contrary to the public interest." 5 U.S.C. § 553(b)(B). CEQ invokes all three prongs of this "good cause" exception. None of them apply here.

As a threshold matter, courts "have repeatedly made clear that the good cause exception is to be narrowly construed and only reluctantly countenanced." *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012). "The exception excuses notice and comment in emergency situations, or where delay could result in serious harm. . . . [T]he exceptions at issue here are not 'escape clauses' that may be arbitrarily utilized at the agency's whim. Rather, use of these exceptions by administrative agencies should be limited to emergency situations . . . ."). *Id.* (second alteration in original) (internal quotation marks omitted) (citing *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004); *Am. Fed. of Gov't Emps. v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981). "Notice and comment can only be avoided in truly exceptional emergency situations, which notably, *cannot arise as a result of the agency's own delay*." *Washington Alliance of Technology Workers v. U.S. Dep't of Homeland Security*, 202 F. Supp. 3d 20, 26 (D.D.C. 2016) (emphasis added) (citing *Envt'l Def. Fund, Inc. v. EPA*, 716 F.2d 915, 920-21 (D.C. Cir. 1983) ("[T]he imminence of the deadline permits an agency to avoid APA procedures only in exceptional circumstances. Otherwise, an agency could simply wait until the eve of an administrative deadline, then raise up the 'good cause' banner and promulgate rules without following APA procedures. That is what happened in this case, and the agency's action, therefore, falls outside the scope of the good cause exception.") (internal quotation marks and alterations omitted). For the reasons discussed below, CEQ's invocation of "good cause" here is the paradigm of an "arbitrar[y] . . . whim." *Mack Trucks*, 682 F.3d at 93.

(a) CEQ Has Not Shown Complying with the Notice and Comment Requirement Would Have Been "Impracticable"

Turning to CEQ's invocation of the prongs of the "good cause" exception: *First*, CEQ claims that it would be "impracticable" to take comment before delaying the deadline. Specifically, CEQ argues that observing "an ordinary [i.e., the legally required] notice and comment process" to delay the deadline "is impracticable . . . because there is not enough time to conduct an adequate public comment process and complete the rulemaking before the September 14, 2021 deadline." 86 Fed. Reg. at 34,156/2-3. And *second*, CEQ argues as a fallback that, even if this were not so, agency revisions to their NEPA procedures "*may* be substantial and require significant lead time for agencies to complete before September 14, 2021"; because developing agency NEPA procedures "*typically* involves significant coordination." *Id.* at 34,156/3 (emphases added).

As an initial matter, CEQ provides only a conclusory assertion that "there is not enough time" between June 2021 (the date of the signature and publication of the Delay Rule, as discussed in more detail below) and September 2021 to follow the law. Without any explanation of why this is so, CEQ has not shown impracticability. But even accepting for the sake of argument that this is not enough time, CEQ simply cannot cite tight timing as "good cause" here because that situation "ar[ose] as a result of the agency's own delay." *Washington Alliance of Technology Workers*, 202 F. Supp. at 2016.

The latest date of the occurrences that CEQ cites in its explanation of why it is reviewing the Reform Rule is January 27, 2021, the date of Executive Order 14,008. *See* 86 Fed. Reg. at 34,155/2 (reciting fact and date of that Order); *id.* at 34,156/3 (stating that an earlier Executive Order, Number 13,990, was the instrument that "directed CEQ to commence a review of the [Reform] Rule"). CEQ describes President Biden's Executive Orders 13,990 and 14,008 collectively as having "initiated CEQ's comprehensive review of the [Reform] Rule," 86 Fed. Reg. at 34,156/2. But CEQ's Chair did not sign the Delay Rule until June 22, 2021, and it was not published in the *Federal Register* until June 29, 2021. *See* 86 Fed. Reg. 34,154, 34,158/2 (June 29, 2021). That is, CEQ waited *5 months* after beginning its review of the Reform Rule before delaying without prior comment a key feature of that Rule. CEQ does not provide any reason for this delay, nor does it assert that 8 months (between January and September) would have been insufficient time to obey the law. Any impracticability here is entirely of CEQ's own making, and as such, cannot constitute "good cause" to evade required notice and comment.

(b) CEQ Has Not Shown Complying with the Notice and Comment Requirement Was "Unnecessary"

CEQ argues that taking comments before delaying the deadline is "unnecessary" for three reasons: (1) doing so "will have no impact on the public"; (2) CEQ already took comment on the deadline in the notice-and-comment process that led to the Reform Rule; and (3) the Office of Management And Budget (OMB) has concluded that requiring agencies to report on their progress towards meeting the September 14, 2021 deadline "would be inconsistent with the [Biden] Administration's policies." 86 Fed. Reg. at 34,1563-34,157/1. Reason (1) is incorrect. Reason (2) actually highlights why the Delay Rule is illegal. Reason (3) is irrelevant.

First, in addition to the analysis above explaining why the Delay Rule is not merely internal in nature, it is not the case that the Delay Rule has "no impact on the public": it delays by years, tripling the length selected (through notice and comment) by the Reform Rule, the deadline for agencies beyond CEQ to begin to do their part in NEPA reforms. The Reform Rule affects what information a project proponent must provide a federal agency, what analysis the agency will perform, and how long the analysis will take before the project proponent receives a decision from the agency with respect to necessary permits, funding, and the like. CEQ determined through the Reform Rule rulemaking process that these NEPA reforms were appropriate and necessary. While CEQ is free to attempt to depart from that determination in a rational and procedurally compliant way, major changes to the implementation structure it established presumptively impact the public. It must only be carried out after notice and comment.

CEQ here cites *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 94 (D.C. Cir. 2012). But that opinion actually held that EPA *did not* have good cause to forego notice and comment, and it stresses that this prong of the "good cause" exception "is 'confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and the public.'" *Id.* (quoting *Util. Solid Waste Activities Grp. v. EPA*, 236 F.34d 749, 754 (D.C.

Cir. 2001). *Tripling* the length of a deadline is not "insignificant in nature" and indeed is not the sort of thing that CEQ or any other agency would do "routine[ly]."

Second, the Delay Rule rightly notes that "CEQ accepted public comment on this 12-month deadline before promulgating the [Reform] rule," 86 Fed. Reg. at 34,156/3. But that is all the more reason why it is improper for CEQ to alter that deadline without observing procedural rulemaking requirements. As explained below in the discussion of the *Fox v. FCC* standard, CEQ in the Reform Rule selected the deadline by balancing various policy considerations and after giving public notice and receiving comment. This was a substantive aspect of the Reform Rule. CEQ has now executed a significant change of this aspect, significantly departing from the outcome of the prior, comment-informed rulemaking process. The thorough consideration that CEQ gave this issue in the Reform Rule is yet another reason why further comment was required before taking that step. And the authority CEQ cites cannot help it, *see Priests for Life v. HHS*, 772 F.3d 229, 276 (D.C. Cir 2014). Not only was *Priests for Life* vacated by the Supreme Court, but it only upheld a failure to take comment before acting where "the modifications made in the interim final regulations [were] minor, meant only to augment current regulations in light of the Supreme Court's interim order in connection with an application for an injunction in [another case]." *Id.* (internal quotation marks omitted). Again, tripling the length of the deadline for a key element of the Reform Rule cannot fairly be characterized as "minor," nor did CEQ take this step to respond to an act of a coordinate branch of government.

Third, that OMB revoked a memorandum in which it had set deadlines for agencies to report to it on their progress towards meeting the Reform Rule's deadline has no bearing on whether CEQ needs to take comment before delaying that deadline. OMB is not the agency that oversees the executive branch's implementation of NEPA. OMB did not issue the Reform Rule. OMB's revocation memorandum says nothing of substance about the Reform Rule at all, let alone that Rule's proposal deadline. The revocation memorandum merely says that OMB's earlier memorandum "is *or may be* inconsistent with, or present obstacles to, the [Biden] Administration's policies." Shalanda D. Young, Acting Director, OMB, OMB Memorandum M-21-23: Revocation of OMB Memorandum M-21-01 (Apr. 26, 2021) (emphasis added). (Notably, CEQ's Delay Rule mischaracterizes OMB as affirmatively "hav[ing] *reached the conclusion* that [the prior memorandum] *would be* inconsistent with" those policies. 86 Fed. Reg. at 34,157/1 (emphases added).) Executive Orders cannot override regulations adopted through notice and comment; broad conclusory musing that those Orders *might* be in tension with regulations cannot obviate the need to take comment before changing them.

In a similar vein, the Delay Rule repeatedly notes that the Department of Transportation (DOT) was the only agency that had published its own proposed NEPA reforms prior to the beginning of the Biden Administration, 86 Fed. Reg. at 34,156/2-3; *see* 85 Fed. Reg. 74,640 (Nov. 23, 2020) (DOT proposal). Although the Delay Rule asserts that this "evidences the significant investment of time and resources required for agencies to develop proposed implementing procedures," *id.*, it is unclear how CEQ thinks that this justifies the Delay Rule as a policy matter, let alone

how it justifies revising the deadline without first taking comment. That one agency had beat the 12-month deadline by many months is not evidence that other agencies would fail to meet the deadline, let alone a refutation of the reasons given by CEQ in the Reform Rule for selecting that deadline in the first place, as discussed below. This is, at best, another *non sequitur*. If anything, it shows that CEQ acted wisely when the Reform Rule set a proposal deadline of September 2021 and illustrates the risk of confusion on the part of all stakeholders that could arise from CEQ interrupting the implementation process rather than allowing it to proceed as required by the Reform Rule.

(c) CEQ Has Not Shown Complying with the Notice and Comment Requirement Would Have Been "Contrary to the Public Interest"

CEQ asserts that "keeping the September 14, 2021 deadline without immediate action [i.e., without observing the legally required notice and comment process prior to taking final action] is contrary to the public interest." 86 Fed. Reg. at 34,156/3. CEQ's sole attempt to substantiate this assertion is to claim that observing notice and comment procedures before delaying the deadline "would result in Federal agencies' wasteful expenditure of their resources and personnel to develop proposed procedures to implement a rule that CEQ is reviewing and intends to revise." *Id.*

As an initial matter, CEQ acknowledges that this argument is entirely duplicative of its argument on the "impracticable" prong, *id.* ("*For this same reason* . . . [taking comment before acting] is contrary to the public interest . . . .") (emphasis added). But addressing this "public interest" assertion on its own terms, for the reasons explained both in the "impracticable" prong analysis above, as well as below in the section of these comments explaining why the Delay Rule is arbitrary and capricious, CEQ has not shown that it meets this prong of the APA's notice-and-comment exception. The proposition that delaying a rule is justified due to conclusory assertions of concern that compliance with that rule may be "wasteful" because the agency that issued the rule "is reviewing and intends to revise it" has been rejected by the overwhelming weight of judicial authority. *A fortiori*, such assertions of concern cannot possibly justify foregoing APA notice and comment requirements. Otherwise, any agency could justify delaying any date in any rule, *without taking comment beforehand*, merely by stating that it "intends" to change the rule. Nothing would be left of the notice and comment requirement.

This brief and conclusory assertion of the "public interest" is not an adequate engagement with that crucial concept. Rather, the public interest continues to lie where CEQ determined it lay when CEQ promulgated the Reform Rule in observance with applicable procedural requirements. That is, the public interest lies with other agencies proposing their NEPA reforms by September 14, 2021, a year after CEQ issued the Reform Rule.

Finally, that the United States Supreme Court has recently rejected a challenge to an agency's use of an interim final rule mechanism in another context does not immunize CEQ's Delay Rule. *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), stands for the proposition that an

agency document styled as an "interim final rule" rather than a "proposal" may under some circumstances not be procedurally defective. But the Court noted in there that the rule in question "explained its position in fulsome detail," *id.* at 2385. As explained below, that is far from the case here. *Little Sisters* did not nullify the APA's notice and comment requirement. It did not give agencies *carte blanche* to shoot first and ask for comment later, and CEQ's attempt to do so here is lawless.

(B) The Delay Rule Is Arbitrary and Capricious

Even assuming for the sake of argument that CEQ had properly invoked an exemption that allowed it to avoid taking comment before issuing the Delay Rule, the Rule is not legal if it is arbitrary and capricious. It is just that. *Cf. Little Sisters*, 140 S. Ct. at 2398 & n.2 (Kagan, J., concurring) (agreeing with the Court on the procedural question but noting question, whether the rule was arbitrary and capricious, is "unaffected by" the Court's decision).

CEQ's justifications for delaying the deadline are sparse and vague. The agency says that it "has substantial concerns about the legality of the [Reform] Rule, the process that produced it, and whether [it] meets the nation's needs and priorities, including the priorities set forth in [Executive Order] 13990 and [Executive Order] 14008." 86 Fed. Reg. at 34,155/3. CEQ includes a conclusory list of headlines of these ostensible concerns: "confusion with respect to NEPA implementation"; "break from longstanding caselaw"; and that it "*may* have the have the purpose or effect of improperly limiting relevant NEPA analysis." *Id.* (emphasis added). CEQ also asserts without details that "[f]ederal agencies have raised concerns to CEQ about developing revised procedures" due to the Reform Rule's (unspecified) "inconsistency with" Executive Orders 13990 and 14008, as well as with CEQ's ongoing review of the Rule. On this basis, CEQ asserts that the deadline delay "will address these concerns and allow Federal agencies to avoid wasting resources developing procedures based upon regulations that CEQ *may* repeal or substantially amend." *Id.*

The dates contained within a rule are a substantive aspect of that rule; changing them is a rulemaking subject to the same procedural and substantive requirements that applied to the underlying rule, and it is not permissible for an agency to delay a rule's dates simply because it is contemplating revising or repealing the rule or because it articulates concerns about the rule's soundness (without actually changing the rule or departing from its findings through the required procedures). *See, e.g.*, *S.C. Coastal Conservation League v. Pruitt*, 318 F. Supp. 3d 959, 965-66 & n.2 (D.S.C. 2018) (collecting cases); *Air Alliance Houston v. EPA*, 906 F.3d 1049, 1066-67 (D.C. Cir. 2018) ("EPA repeatedly justifies the 20-month delay as providing time for taking and considering public comment on the [underlying] Rule and any potential revisions or rescission thereof. . . . [But] the mere fact of reconsideration, alone, is not a sufficient basis to delay promulgated effective dates specifically chosen by [an agency] on the basis of public input and reasoned explanation . . . .").

The Delay Rule flies directly in the face of these legal restrictions. CEQ expressly justifies its chosen policy of delay based on the fact that it is taking another

look at the Reform Rule and *may* at some point revise it and by a conclusory recitation of *potential* flaws in the Reform Rule. These ostensible flaws *could*, if determined in a final manner by CEQ through the required procedures and with a properly articulated reasoned basis, potentially constitute a legally valid basis for altering the Reform Rule. CEQ is far from reaching that point, and courts have roundly and reliably rejected attempts such as this one to short-circuit the process.

CEQ's dilemma is quite simple. It has not begun the process of attempting a valid change to the Reform Rule. It has not validly departed from any of the policy views and provisions embodied in that Rule. It needs to buy time; it wants to halt implementation of the Reform Rule without having to provide the needed rationale and without having to observe the required procedures. But this is not an acceptable method of proceeding.

(i) The Delay Rule Violates the Standard Governing Changes in Agency Position

The Delay Rule's issues are compounded by its failure to meaningfully engage with the Reform Rule's establishment of the 12-month deadline. The governing standard applying the general arbitrary-and-capricious standard to cases where an agency changes position is well established: "As the Supreme Court has explained, an agency must change its policy position but must 'display awareness that it *is* changing position' and 'show that there are good reasons for the new policy.'" *Am. Hosp. Ass'n v. Azar*, 983 F.3d 528, 539 (D.C. Cir. 2020) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)). CEQ violated this standard in the Delay Rule.

The Reform Rule explains that its selection of a 12-month deadline for agencies to propose their own NEPA reforms "strikes a balance between minimizing the disruption to ongoing environmental reviews while also requiring agencies to revise their procedures in a timely manner to ensure future reviews are consistent with the final rule." 86 Fed. Reg. at 43,340/2 (final rule). And in the Response to Comments accompanying the final Reform Rule, CEQ addressed comments that argued 12 months was too short, as well as comments that argued that 12 months was too long. Among other things, CEQ here noted that the time frame provided was "comparable to the amount of time the 1978 regulations allowed in 40 CFR 1507.3 for agencies to adopt procedures"; determined that "[t]he final [Reform] rule contains critical improvements to the NEPA process, and each agency should expeditiously review and propose revisions to their procedures to eliminate inconsistencies in the implementation of the final [Reform] rule"; and expressed the expectations "that agencies will allocate the necessary resources to propose agency NEPA procedures or revisions, as necessary, before the applicable deadline in the final rule" and "that agency NEPA procedures will be tailored to the final [Reform] rule and specific agency programs and circumstances, and focused on adding efficiencies." CEQ, Final [Reform] Rule Response to Comments (June 30, 2020), at 440-42. In sum, when it crafted the Reform Rule and its 12-month deadline, CEQ engaged in careful analysis of that deadline, balanced multiple considerations, and explained to the public its final choice and the reasons for that choice.

The Delay Rule *does not even acknowledge* this prior analysis, let alone acknowledge that CEQ is changing course from that analysis or provide the public with any explanation for its selection of a new, 36-month deadline. *Cf. Air Alliance Houston*, 906 F.3d at 1067 ("[N]othing in the Delay Rule explains [the agency's] departure from its stated reasoning in setting the original effective date and compliance dates."). This is particularly glaring here because CEQ's "interim final" Delay Rule expresses concern that the burden on agencies in developing proposed rules "may be substantial and require significant lead time," 86 Fed. Reg. 34,156/3—an issue, as set forth above, that was expressly considered by CEQ when it set the 12-month deadline in the first place. Separate and apart from the other defects discussed in these comments, the Delay Rule's violation of the *Fox* standard is by itself a fatal legal flaw.

The contrast between the Delay Rule's unreasoned extension of the deadline on the one hand, and the Reform Rule's reasoned establishment of the deadline on the other, makes one aspect of the Delay Rule all the more obvious: Nowhere does it explain *why* it selects a new deadline of 36 months (rather than the original 12) from the Reform Rule's effective date. Even its after-the-fact solicitation of comment gives the public no reasoning on which to comment. This is a hole at the center of the Delay Rule, but the delay's real purpose is patently obvious behind the Rule's pretext. The Biden Administration has no intention of implementing the Reform Rule, and so it has simply pushed the deadline out to a point far enough in the future that it thinks it will by then be done with whatever revisions or repeal efforts it may attempt to effect. This cynical end-run around a duly promulgated and binding regulation cannot stand.

ATTACHMENT B

Comments of AFPI, Texas Public Policy Foundation's Life:Powered, the Competitive Enterprise Institute, and Heritage Action on the CEQ's Proposal: National Environmental Policy Act Implementing Regulations Revisions, 86 Fed. Reg. 55757, (October 7, 2021), filed November 22, 2021 and docketed as CEQ-2021-0002

November 22, 2021

VIA ELECTRONIC FILING

Amy B. Coyle
Deputy General Counsel
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

RE: National Environmental Policy Act Implementing Regulations Revisions, 86 Fed. Reg. 55757, October 7, 2021, [Docket No. CEQ-2021-0002]

Ms. Coyle:

Please see the below comments from the America First Policy Institute, the Life:Powered project of the Texas Public Policy Foundation, the Competitive Enterprise Institute, and Heritage Action RE: National Environmental Policy Act Implementing Regulations Revisions, 86 Fed. Reg. 55757, October 7, 2021, Docket No. CEQ-2021-0002. Thank you for the opportunity to comment.

INTRODUCTION

The America First Policy Institute (AFPI), the Life:Powered project of the Texas Public Policy Foundation (TPPF), the Competitive Enterprise Institute (CEI), and Heritage Action appreciate the opportunity to comment on the Council on Environmental Quality's (CEQ) proposed rule, *National Environmental Policy Act Implementing Regulations Revisions*, 86 Fed. Reg. 55,757 (Oct. 7, 2021) (Phase 1 Rollback Proposal, the 2021 Proposal, or the Proposal).

Our comments explain why the Proposal is legally infirm and unsound as a matter of policy. The Biden Administration claims to support infrastructure investments as a key pillar of its domestic agenda, touting record levels of spending in recent legislation that it championed. At the same time, however, it is gutting last year's NEPA reforms, which were intended to remove unnecessary delays in federal authorization and environmental review processes. This is in direct contradiction to its ostensible infrastructure agenda, and is, to say the least, counterproductive. Indeed, it fatally undermines the administration's own "clean energy goals." Under the system that CEQ now proposes to revert to, it will be virtually impossible to secure anywhere near the number of federal permits that would be needed to deploy renewable energy at the scale and speed that President Biden has promised.

CEQ should abandon this improper course of piecemeal rollbacks of the sound and badly needed regulatory reform that it promulgated last year, and instead implement that reform as it was intended: in a manner that maintains and improves environmental protections while reducing unnecessary burdens and delays in infrastructure and other projects. *See generally Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*,

85 Fed. Reg. 1,684 (Jan. 10, 2020) (Proposed Reform Rule); 85 Fed. Reg. 43,304 (July 16, 2020) (2020 Reform Rule, Reform Rule or Final Reform Rule).

AFPI is a 501(c)(3) non-profit, non-partisan research institute. AFPI exists to conduct research and develop policies that put the American people first. Our guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do. One of AFPI's core priorities is ensuring that America is a nation that can build and prosper. That is AFPI's public policy interest in CEQ's 2020 Reform Rule, which is instrumental to a prosperous America.

Life:Powered is a national initiative of the Texas Public Policy Foundation, a 501(c)(3) non-profit and non-partisan research institute, to raise America's energy IQ. Our objective is to advocate for energy and environmental policies that promote economic freedom and advance the human condition. Life:Powered believes that environmental laws should exist to serve humanity, not the other way around. The growing abuse of NEPA to arbitrarily restrict infrastructure development and promote anti-growth agendas is why the 2020 NEPA Reform Rule was a significant advance in this policy arena. Rolling back, delaying, or minimizing the Reform Rule will eliminate the significant benefits of that rule, fail to improve the environment, and harm the administration's primary objective of repairing and improving America's infrastructure.

The Competitive Enterprise Institute is a 501(c)(3) nonpartisan, nonprofit public policy institute that supports free markets and limited government and specializes in regulatory policies. CEI has a longstanding interest in reform of the National Environmental Policy Act and submitted comments on previous proposed rules.

Heritage Action is a 501(c)(4) national grassroots organization with two million conservative activists nationwide, dedicated to advancing the conservative principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. To advance those principles, Heritage Action supports CEQ's 2020 Reform Rule, which promoted individual freedom and free enterprise against government overreach.

Our comments address the Proposal's three areas of proposed rescission of the Reform Rule. This section of the comments offers both general observations as to why they are legally deficient and insufficiently reasoned, and specific analysis of each proposed rescission. The second section of the comments then analyzes how the Proposed Rule's impact analysis and empirical support are inadequate, both on their own terms and as compared to the analyses that accompanied the Reform Rule.

ANALYSIS

1. The 2021 Proposal's three areas of proposed rollback of the 2020 Reform Rule and the deficiencies in CEQ's justification for these proposed rollbacks

Below, these comments analyze in detail the three aspects of the Reform Rule that the Phase 1 Rollback Proposal proposes to rescind. But as a threshold matter, there are two fundamental flaws that pervade and undermine the Proposal as a whole: (1) it does not sufficiently acknowledge the Reform Rule's motivation and central conclusions, nor justify its proposal to rescind some of the Reform Rule's central provisions; and (2) it does not properly account for the fact that it is proposing to undo regulatory changes on which CEQ very recently took extensive comment and reached considered policy conclusions.

First, the Proposed Rule fails to meet the standard for an agency justifying a change in its position. The governing standard applying the general arbitrary-and-capricious standard to cases where an agency changes position is well established: "As the Supreme Court has explained, an agency may change its policy position but must 'display awareness that it *is* changing position' and 'show that there are good reasons for the new policy.'" *Am. Hosp. Ass'n v. Azar*, 983 F.3d 528, 539 (D.C. Cir. 2020) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

The Proposed Rule does not do this. It never squarely identifies the Reform Rule's central identification of the policy problem and reasons for selecting a policy approach to solve that problem. And it never sufficiently gives "good reasons" for the "new policy"—which, here, is the first phase in an apparent two-phase plan to *revert* to the very policy that the Reform Rule identified as needing revision.

CEQ in January 2020 clearly and forthrightly identified a policy problem on the first two pages of the Proposed Reform Rule: CEQ's 1978 NEPA implementing regulations and the associated growth of related executive and legislative policy instruments and related litigation had become unwieldy and led to harmful burdens and delays.

> CEQ . . . promulgated its NEPA implementing regulations in 1978. The original goals of those regulations were to reduce paperwork and delays, and promote better decisions consistent with the national environmental policy established by the Act. Since their promulgation, however, there has been a need for clarification of the regulations . . . . Notwithstanding the issuance of guidance, Presidential directives, and legislation, implementation of NEPA and the [1978] CEQ regulations can be challenging, and the process can be lengthy, costly, and complex. In some cases, the NEPA process and related litigation has slowed or prevented the development of new infrastructure and other projects that required Federal permits or approvals.

85 Fed. Reg. at 1,684/3-1,685/1.

The Proposed Reform Rule set forth with clarity and concision its intended approach to addressing this policy problem, and the goal that the Reform Rule would work towards:

> The proposed amendments would advance the original goals of the CEQ regulations to *reduce paperwork and delays*, and promote better decisions consistent with the national environmental policy set forth in section 101 of NEPA.

Id. at 1,684/1 (emphasis added).

In the July 2020 Final Reform Rule, CEQ likewise prominently and clearly explained the policy problem that the Rule addressed:

> Since the promulgation of the 1978 regulations, [ ] the NEPA process has become increasingly complicated and can involve excessive paperwork and lengthy delays. The regulations have been challenging to navigate with related provisions scattered throughout, and include definitions and provisions that have led to confusion and generated extensive litigation. . . . [T]he NEPA process continues to slow or prevent the development of important infrastructure and other projects that require Federal permits or approvals, as well as rulemakings and other proposed actions. Agency practice has also continued to evolve over the past four decades, but many of the most efficient and effective practices have not been incorporated into the CEQ regulations. . . . NEPA implementation and related litigation can be lengthy and significantly delay major infrastructure and other projects.

Id. at 43,305/2.

The Reform Rule's findings were no mere conclusory statements. It clearly identified data and cited studies to support its determination that the NEPA process by 2020 had evolved to a point where it was imposing unacceptable delays and resulting in NEPA analysis documents of facially excessive length and complexity. And it contrasted this unacceptable state of affairs with its own statements decades earlier concerning how the process should work. *See id.* at 43,305/2-43,306/1 (citing CEQ and outside analyses showing: NEPA reviews for Federal Highway Administration projects take an average of over seven years as compared to CEQ's 1981 prediction that most NEPA analyses should take one year or less; NEPA reviews across the federal government average four and a half years; and NEPA review documents average some 661 pages in length, over four times the length contemplated in CEQ's 1978 regulations).

This musters an impressive showing of the need for reform. The Proposal acknowledges none of it. Indeed, the Proposal *does not anywhere directly acknowledge* the central goals of the Reform Rule. *See* 86 Fed Reg. at 55,758/2

(narrating the fact of the Proposed and Final Reform Rule without describing its assessment of the policy problem or its proposed solutions to that problem).

The Proposal repeatedly states, in varying formulations, that it is proposing to "realign" its regulations with longstanding CEQ and acting-agency practice that preceded the Reform Rule.[1] The reader will search the Proposal in vain for any sign of whether CEQ now disagrees with the fundamental motivating premise of the Reform Rule: that the NEPA process as it evolved between 1978 and 2020 had resulted in unacceptable burdens, complexity, and delays. But all signs are that CEQ now intends to restore the pre-2020 *status quo* in its entirety. The problem is that CEQ is not forthrightly saying this so that the American people can judge CEQ's reasons for this new position and respond in their comments accordingly.

On its second page, the Reform Rule makes the following general proclamation:

> The fundamental principles of informed and science-based decision making, transparency, and public engagement are reflected in both the NEPA statute and CEQ's 1978 NEPA Regulations, and it is those core principles that CEQ seeks to advance in this proposed rule.

Id. at 55,758/2. This certainly *looks* as if it's a wholesale rejection of the Reform Rule and a statement of intent to eventually restore the pre-2020 regulations in their entirety. But CEQ never actually says that, nor does it explain *why* it has completely changed its views in a little over a year, whether the facts about delay cited in the Reform Rule are either incorrect or outweighed by other considerations, or whether instead CEQ does agree that the pre-2020 process had become unacceptably burdensome and delayed, but has a "third way" of solving that problem that is neither an eventual full return to the pre-2020 approach nor a retention of the Reform Rule.

The Proposal is deficient for another reason: it fails to consider an obvious alternative approach. "*State Farm* teaches that when an agency rescinds a prior policy its reasoned analysis must consider the 'alternative[s]' that are 'within the ambit of the existing [policy].'" *DHS v. Regents of the Univ. of Calif.*, 140 S. Ct. 1891, 1913 (2020) (alterations in original (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 51 (1983) (*State Farm*)). "[T]he failure of an agency to consider obvious alternatives has led uniformly to reversal." *City of Brookings Mun. Telephone Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987) (internal quotation marks omitted).

[1] *See, e.g.*, 86 Fed. Reg. at 55,757/2 (CEQ is proposing to "generally restore regulatory provisions that were in effect for decades before being modified in 2020. CEQ proposes these changes in order to better align the provisions with CEQ's extensive experience implementing NEPA, in particular its perspective on how NEPA can best inform agency decision making, as well as longstanding Federal agency experience and practice . . . ."); *id.* at 55,760/1 ("CEQ proposes to amend these provisions by generally reverting to the language from the 1978 NEPA Regulations that was in effect for more than 40 years, subject to minor revisions for clarity."); *id.* at 55,763/1 ("CEQ proposes to restore the terms 'direct'' and ''indirect' to the definition of 'effects'' to realign the regulations with longstanding agency practice and judicial decisions interpreting NEPA.") (footnote omitted).

The obvious alternative approach that the Proposal fails to consider is one under which it would wait to propose changes to the Reform Rule until it was ready to forthrightly announce what its (apparent) new position is with regard to whether the pre-2020 regulations were or were not associated with unacceptable cost, complexity, and delay. CEQ's only explanation for the piecemeal, "phased" approach to rollback is that the provisions targeted for rescission in this Phase 1 Proposal: (1) "pose significant near-term interpretation or implementation challenges"; (2) "have the most impact to agencies' NEPA processes"; (3) "make sense to revert to the 1978 regulatory approach for the reasons discussed' in the Proposal"; and (4) are ones where "CEQ is generally unlikely to propose to further revise in a Phase 2 rulemaking." 86 Fed. Reg. at 55,759/3.

The first and second statements are *ipse dixit* without any further explanation or other documentary support. The third statement is purely tautological: "we are proposing *these* changes because of the reasons stated in support of the proposal."

The fourth statement raises more questions, which emphasize even further the fundamental irrationality and illegitimacy of CEQ's approach: How does CEQ know what it is and isn't likely to do in the heralded "Phase 2?" If it knows to some degree of certainty what that second Phase will and won't include, why not wait a little longer and then holistically propose a full suite of changes to the Reform Rule? If CEQ does intend to propose to repeal the Reform Rule in full, why not do so now? There is one possible explanation for CEQ's segmented approach: it may hope to permanently evade the obligation to *ever* address in a head-on manner the Reform Rule's formulation of the underlying policy problem. If so, then CEQ is willfully violating the *Fox* standard.

The Proposal, as discussed below, repeatedly cites putative risk of "confusion" as a reason for rescinding aspects of the Reform Rule. As an initial matter, this by itself cannot be a justification to roll back a regulatory reform. Any change in a long-established status quo will result in a period of adjustment as people in and out of government familiarize themselves with the new arrangement. If this fact were enough to justify repealing a reform rule, no regulatory agency would ever be able to update its regulations. (Of course, the Biden Administration plainly does not believe that avoiding "confusion" counsels against regulatory reform. It is currently engaged in rulemakings to rescind or revise substantially all of the major regulatory actions that the prior Administration conducted.[2])

Here, the Proposal's own concealment of its guiding policy vision (or, perhaps, its fundamental absence of one) is tailor-made to sow confusion in acting agencies, project proponents, and the public at large. The Proposal is hiding the ball. Whereas

[2] *See, e.g.*, 86 Fed. Reg. 63,310 (Nov. 15, 2021) (proposing to rescind large portions of a 2020 regulatory reform to Clean Air Act regulations of oil and gas facilities); 86 Fed. Reg. 43,726 (Aug. 10, 2021) (proposing to revise greenhouse gas emissions standards for light-duty vehicles); Intention to Revise the Definition of "Waters of the United States" (June 9, 20201), *available at* https://www.epa.gov/wotus/intention-revise-definition-waters-united-states (last visited Nov. 12, 2021).

the Reform Rule clearly and prominently stated its view of the regulatory landscape on which it acted and the overall reason why it made the changes it did, the Proposal does neither. It does not meet the *Fox* standard, meaning it is legally deficient, and it does not level with the American people, meaning it is unsound and improper.

Second, as it did in its interim final rule earlier this year that extended other agencies' deadlines to propose reforms in their own NEPA regulations and procedures,[3] CEQ in the Proposal repeatedly notes that it took extensive comment on these issues during the Reform Rule rulemaking. *See* 86 Fed. Reg. at 55,760/1 ("In proposing to revert to language in the 1978 Regulations, this NPRM addresses issues similar or identical to those the public and Federal agencies recently had the opportunity to consider and comment on during the rulemaking for the 2020 NEPA Regulations, which will facilitate an expeditious Phase 1 rulemaking.").

CEQ apparently believes that it faces a *lower* burden in this proposed rollback because of the recency, specificity, and detail with which in the Reform Rule it took comment on these precise issues, made the choice to effect policy changes, and responded to comments in support of and opposition to those changes. If that is CEQ's belief, it is wrong. Its abrupt and cursory proposal of an about-face highlights the inadequacies of this proposal and its failure to seriously engage with the weighty issues at stake.

In the end, the following passage is the closest the Reform Rule comes to informing the public what is its formulation of the policy problem it seeks to address: 55,759/2:

> It is CEQ's view that the [Reform Rule] may have the effect of limiting the scope of NEPA analysis, with negative repercussions for environmental protection and environmental quality, including in critical areas such as climate change and environmental justice. Portions of the 2020 NEPA Regulations also may not reflect NEPA's statutory purposes to "encourage productive and enjoyable harmony" between humans and the environment, promote efforts that will prevent or eliminate damage to the environment and biosphere, and enhance public health and welfare. *See* 42 U.S.C. 4321. Some changes introduced by the 2020 NEPA Regulations also may not support science-based decision making or be compatible with the Administration's policies to improve public health, protect the environment, prioritize environmental justice, provide access to clean air and water, and reduce greenhouse gas emissions that contribute to climate change.

Id. at 55,759/2.

[3] *See* AFPI and TPPF's Life:Powered Delay Rule Comments at 10 (citing 86 Fed. Reg. at 34,156/3) (Delay Rule) ("CEQ accepted public comment on this 12-month deadline before promulgating the [Reform] rule").

The contrast with the Reform Rule is stark. Here, the Proposal provides no empirical support for its concerns, instead cobbling together quotations and paraphrases of the statute, buzzwords, and broad platitudes. And, once again, it does not engage with the Reform Rule's formulation of the policy problem.

What follows is our analysis of the specific provisions of the Reform Rule that the Proposal would rescind, CEQ's justifications for the proposed rescissions, and why those justifications are inadequate.

A – Purpose and need

Section 102 of NEPA requires that every environmental impact statement contain, in addition to a detailed statement of the environmental impact of the proposed action and other requirements, a discussion of "alternatives *to the proposed action*." 42 U.S.C. § 4332(2)(C)(iii) (emphasis supplied). The 1978 regulations tried to supply some guidance by introducing the concept of "purpose and need" as a limiting principle on the range of alternatives that agencies should consider, the idea being that agencies would not be required to study alternatives that did not at least meet the purpose and need for the proposed action.

However, the precise wording of the 1978 regulation invited confusion. In its original form, § 1502.13 stated: "The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." This wording has led agencies to conflate the purpose and need for the *proposed action* with the purpose and need for the *proposed project*, which has led to an unwarranted expansion in the range of alternatives that agencies consider when crafting an Environmental Impact Statement (EIS), and hence added delays, expense, and uncertainty in the NEPA process.

Sometimes the "action" and the "project" are the same – as, for example, with a forest management plan or military basing decision. But in the case of major non-federal infrastructure projects, the proposed federal action is limited to some authorization or appropriation. In those cases, the purpose and need for the proposed project is of no concern to the agency unless the action statute makes it so. NEPA § 102(2)(C)(iii) only requires the agency to examine alternatives to the *action*. Nothing in the NEPA statute requires agencies to study alternatives to a proposed *project* merely because the project happens to require some federal authorization that triggers NEPA review.

Nonetheless, agencies have long conflated or confused the purpose and need for the proposed action with the purpose and need for the proposed project. As a result, agencies have spent inordinate amounts of time and taxpayer resources studying project alternatives that the project proponent would readily exclude for business or policy reasons.

The D.C. Circuit ruled on this precise question in *Citizens against Burlington v. Busey* (938 F. 2d 190, 199 (1991). Criticizing the Seventh Circuit's ruling in *Van Abbema v. Fornell*, 807 F. 2d 633 (1986), then-Judge Thomas wrote:

> We see two critical flaws in *Van Abbema*, and therefore in Citizens' argument. The first is that the *Van Abbema* court misconstrued the language of NEPA. *Van Abbema* involved a private businessman who had applied to the Army Corps of Engineers for permission to build a place to "transload" coal from trucks to barges. *See* 807 F.2d at 635. The panel decided that the Corps had to survey "feasible alternatives . . . to the applicant's proposal," or alternative ways of accomplishing "the general goal [of] deliver[ing] coal from mine to utility." Id. at 638; *see also Trout Unlimited v. Morton*, 509 F.2d 1276, 1286 (9th Cir. 1974). In commanding agencies to discuss "alternatives to the proposed action," however, NEPA plainly refers to alternatives to the "major *Federal* actions significantly affecting the quality of the human environment," and not to alternatives to the applicant's proposal. NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C) (emphasis added). An agency cannot redefine the goals of the proposal that arouses the call for action; it must evaluate alternative ways of achieving *its* goals, shaped by the application at issue and by the function that the agency plays in the decisional process. Congress did expect agencies to consider an applicant's wants when the agency formulates the goals of its own proposed action. Congress did not expect agencies to determine for the applicant what the goals of the applicant's proposal should be.

The Reform Rule resolved the confusion among agencies regarding the scope of the "purpose and need" inquiry by making two mutually reinforcing changes to conform the NEPA implementing regulations to the actual language and clear Congressional intent of NEPA § 102(2)(C)(iii), which, as the D.C. Circuit held in *Citizens against Burlington*, focuses on alternatives to the "proposed action."

First, the 2020 regulation refined the "purpose and need" requirement of § 1502.13: "The statement shall briefly specify the underlying purpose and need *for the proposed action*. When an agency's statutory duty is to review an application for authorization, the agency shall base the purpose and need on the goals of the applicant and the agency's authority." 85 Fed. Reg. at 43,365/3 (emphasis added) (setting forth revised version of Section 1502.13). Second, the 2020 Regulation introduced a new definition of "reasonable alternatives": to wit, "a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need *for the proposed action*, and, where applicable, meet the goals of the applicant." 85 Fed. Reg. at 43,376/2 (emphasis added) (setting forth Section 1508.1(z)).

In the Proposal, CEQ itself admits that "a properly drawn purpose and need statement should lead to consideration of the reasonable alternatives to the *proposed action*." 86 Fed. Reg. at 55,760/3 (emphasis added). But CEQ nonetheless proposes to do away with the phrase "purpose and need for the proposed action" in Section 1502.13, a change for which the Proposal provides no specific explanation,

and which directly contradicts its own description of the function of the "purpose and need" statement. Even more confusing, CEQ is proposing to retain the phrase "purpose and need for the proposed action" in the new definition of "reasonable alternatives." *See id.* at 55,769/1 (setting forth proposed revision to Section 1508.1(z)).

No explanation is given for this disparity, under which CEQ Proposes to eliminate the (correct) refocusing of "purpose and need" analysis on the proposed action, not the underlying proposed project, while proposing to retain the language in the definition of "reasonable alternatives" that effects the same refocusing. And indeed, the only reasonable explanation is that CEQ has failed to understand the crucial difference between a proposed federal action and a proposed project. Simply put, it has failed to explain a rational connection between its decisions and the facts in the record, and its incoherent proposal cannot fairly be viewed as the product of reasoned decision making. *See State Farm*, 463 U.S. at 29, 52.

Second, in addition to clarifying that it is the "purpose and need" for the proposed federal action which the acting agency must consider, not the purpose and need for the underlying project, the Reform Rule codified regulatory language explains that, when an agency is conducting NEPA analysis of a statutorily required authorization, the analysis of "purpose and need" must be based on the applicant's goals and the agency's authority.

The Proposal provides four chief reasons for rescinding this aspect of the Reform Rule:

> (1) CEQ now believes that this language "could be construed to require agencies to prioritize the applicant's goals over other relevant factors, including the public interest" (86 Fed. Reg. at 55,760/1-2);
>
> (2) CEQ now believes this language is "unnecessary" because agencies have a long history of drafting "purpose and need" statements "guided by their statutory authority and the scope of the agency decision under consideration" (*id.* at 55,760/2-3);
>
> (3) CEQ now believes this language is "confusing" because it implies an agency's authority is only relevant when the agency proposes to grant an authorization (*id.* at 55,760/3); and
>
> (4) "Upon further consideration, CEQ does not consider that the language added by the 2020 Rule would necessarily lead to more efficient reviews and finds a lack of evidence to support that claim" (*id.* at 55,761/1).

These reasons are inadequate. As an initial matter, they are infected by the general flaws discussed above, in that they fail to acknowledge, let alone provide a reason to depart from, the Reform Rule's identification of the underlying policy problem.

Furthermore, the proposal to entirely rescind the changes to the "purpose and need" provision due to concerns about the risk of confusion ignores an obvious alternative approach. If CEQ is now concerned that this language will confuse people by making them think that agency authority is only relevant when the agency proposes to grant an authorization, why not move this language into a more general provision, or amend it to clarify that agency authority is relevant to the scoping of NEPA analysis in other scenarios?

A complete rescission of this language would obviously pose another risk, one that the Proposal completely ignores: removing language that states that an agency's determination of a project's purpose and need should be informed by the agency's authority could be interpreted as a sign that CEQ is not concerned with ensuring that agencies act consistent with their authority. Administrative agencies are creatures of statute, and it is axiomatic that they have only the authority that Congress has delegated to them. Ensuring that agencies act at all times consistent with their statutory authority is fundamental to the rule of law and the structure of our Constitution. Removing this language sends precisely the wrong signal in that regard.[4] (At the very least, it poses a risk of "confusion" in that regard—something which the Proposal is concerned about elsewhere but conspicuously silent about here.)

Similarly, removing the reference to the project applicant's goals tends to suggest that those goals are not relevant to the NEPA process. This epitomizes the underlying policy problem that the Reform Rule addressed: the pre-2020 NEPA regime had mushroomed into one of protracted delays and analyses, turning a "consider the environmental implications" function into a "delay and constructively deny" one.

B – Agency NEPA procedures

Removal of "ceiling provision"; restoration of pre-2020 status quo under which other agencies are free to impose more burdensome requirements on project applicants than CEQ's regulations contemplate

The Reform Rule provided that CEQ's regulations, with limited exceptions, set a "ceiling" above which other agencies' NEPA procedures may not add additional burdens:

> Except for agency efficiency (see paragraph (c) of this section) or as otherwise required by law, agency NEPA procedures shall not impose additional procedures or requirements beyond those set forth in the regulations in this subchapter.

85 Fed. Reg. at 43,373/2 (setting forth 40 CFR 1507.3(b)).

[4] The same is true of CEQ's proposal to remove the Reform Rule's exclusion of effects that an agency has no ability to prevent. *See* 86 Fed. Reg. at 55,766/2.

The Proposal offers four chief justifications for this proposed rescission:

(1) CEQ now believes that restoring the pre-2020 language will better meet NEPA's requirements and purpose, because the statute provides that agencies should pursue NEPA's goals "to the fullest extent possible" (86 Fed. Reg. at 55,761/3-5,5762/1) (quoting 42 U.S.C. § 4332) and because one of NEPA's purposes is to give acting agencies flexibility (86 Fed. Reg. at 55,761/2);

(2) CEQ has heard from other agencies that this provision has "created confusion" as to whether they can keep using their existing procedures or whether they need to adopt new ones (*id.* at 55761/3);

(3) CEQ now sides with those commenters on the Proposed Reform Rule who said that switching from a "floor" to a "ceiling" approach "would arbitrarily limit" agencies' role in implementing NEPA, "could interfere" with cooperation between federal and state agencies, and "would create greater complexity and uncertainty for applicants and potentially additional delays and paperwork" (*id.* at 55,762/1-2); and

(4) CEQ now "disagrees with the rationale provided for the 2020 Rule" and "considers the benefits of agency flexibility to outweigh the potential costs and delays" (*id.* at 55,762/2).

This justification is inadequate. To take the last item first, CEQ is here *expressly* privileging acting agency "flexibility" over "costs and delays." Again, the latter was precisely the policy problem identified by the Reform Rule. CEQ has not departed from that formulation of the underlying problem, while in this corner of its Proposal it appears to directly contradict it. And the third item contradicts the fourth one directly: CEQ cites (unsubstantiated) concerns that the Reform Rule will cause "additional delays and paperwork"—and in the next breath says that *agency flexibility* is worth just that risk. CEQ's policy incoherence here is a direct result of it hiding the ball as to its true views with respect to the Reform Rule's policy formulation, and its ill-chosen, piecemeal approach to rescinding the Reform Rule. The American people should not be expected to guess what's on CEQ's mind, or to parse tea leaves to determine when CEQ (now) cares about delay and when it doesn't.

With respect to the statutory term "fullest extent possible" and the relationship between CEQ and other agencies with respect to NEPA, the Proposal fails to acknowledge that CEQ, in its Response to Comments accompanying the Final Reform Rule, specifically rejected reliance on this statutory term and the associated arguments CEQ now adopts as reasons to oppose the "ceiling" approach:

> [C]ommenters stated that agencies should be free to implement whatever procedures or requirements they believe will implement NEPA "to the fullest extent possible," 42 U.S.C. 4332, which may vary according to agency resources,

> the details of the project, and the particularities of potential sites. . . . Successful implementation of NEPA across the Federal government depends on agencies having review processes that can be integrated and are under the direction of CEQ. The statute requires all agencies of the Federal Government to "identify and develop methods and procedures, in consultation with the Council on Environmental Quality . . . which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations." 42 U.S.C. 4332(2)(B). The need for integration was recognized in Title 41 of Fixing America's Surface Transportation (FAST-41), which established new procedures to standardize interagency consultation and coordination practices. 42 U.S.C. 4370m. The integration of NEPA implementation was further strengthened under E.O. 13807, including the creation of the [One Federal Decision] policy. For these reasons, it is important that agencies do not revise their procedures in a way that will impede integration or otherwise result in heightened costs or delays. . . . . The Supreme Court has further explained that E.O. 11991, 3 CFR 124 (1978), requires all "heads of Federal agencies to comply" with the "single set of uniform, mandatory regulations" that CEQ issued to implement NEPA's provisions. *Andrus* [*v. Sierra Club*], 442 U.S. [347,] 357 [(1979)]. The final rule does not purport to override an agency's interpretation of its obligations under a statute that agency is charged with administering.[5]

The Proposal acknowledges precisely none of this: No acknowledgment of FAST-41 or *Andrus*, no explanation whatsoever of why CEQ suddenly abandoned its concern that other agencies not expand their NEPA procedures so as to increase cost or delay.

CEQ's citing complaints from other agencies that they're "confused" as to whether or not they need to revise their own NEPA regulations rings hollow, and it is a self-inflicted wound to the extent that it has any basis. Less than six months ago, CEQ improperly employed an "interim final rule" approach to delay without prior comment the deadline for other agencies to review their NEPA procedures and propose any appropriate changes.[6] That was precisely the approach chosen by CEQ in the Reform Rule by which other agencies would achieve clarity as to whether and how their procedures needed to be altered. CEQ deliberately halted the process through which other agencies could resolve any need for clarification that they may have, and now cites putative agency confusion as a reason why it needs to further gut the Reform Rule. This is patently disingenuous.

Extension of deadline for agencies to propose changes to their own NEPA rules

[5] CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act – Final Rule Response to Comments (June 30, 2020) at 435-37.

[6] AFPI and Texas Public Policy Foundation's Life:Powered filed comments on the interim final rule explaining why that rule was unlawful and irrational. We attach those comments to these comments on the Proposal, incorporate them by reference, and briefly discuss this aspect of the matter below.

As AFPI and TPPF's Life:Powered explained in their comments on the June 2021 "interim final rule,"[7] attached to these new comments and incorporated here by reference, CEQ should not have delayed from six months to three years the deadline for other agencies to propose NEPA reforms.

The Proposal explicitly "does not propose to change that [extended] date." 86 Fed. Reg. at 55,761/2. In the "interim final rule" delaying the deadline, CEQ said it "will consider comments it receives and take further action, if appropriate." 86 Fed. Reg. at 34,157/1. Apparently, CEQ is ignoring the comments it received from AFPI, TPPF's Life:Powered, and others, will not respond to them, and feels no further action is "appropriate."

This is further confirmation, as AFPI and TPPF's Life:Powered's prior comments warn, that CEQ cynically (and illegally) used the "interim final rule" approach to delay this deadline without any intent of adequately justifying its decision to do so either before or after the fact. CEQ is transparently pursuing a "death by 1,000 cuts" approach, seeking to prevent *any* of the 2020 rule's reform benefits from being realized.

C – Definition of "effects"/ "impacts"

The Reform Rule eliminated certain non-statutory terms in CEQ's regulations. These terms divided the types of environmental consequences that agencies are required to analyze under NEPA into three categories: "direct," "indirect," and "cumulative." CEQ also codified a new standard, under which agencies need to consider effects "that are reasonably foreseeable and have a reasonably close causal relationship" to the action under review. The Proposal would eliminate these changes and substantially restore the pre-2020 status quo. CEQ's overall justification for this proposed rescission is twofold:

(1) The new language "creates confusion" (86 Fed. Reg. at 55,762/3); and

(2) The new language "could be read to improperly narrow the scope of environmental effects relevant to NEPA analysis" (*id.* at 55,762/3).

Restoring "direct" and "indirect" effects

CEQ offers three chief justifications for this aspect of the proposed rescission:

(1) Restoring these categories better reflects NEPA's statutory purpose and intent, and is more consistent with caselaw (86 Fed. Reg. at 55,763/1);

(2) "[A]gency NEPA practitioners" have asked CEQ for clarification, which is held out as evidence of confusion (*id.* at 55,763/1);

[7] AFPI & Texas Public Policy Foundation's Life:Powered, Comments (July 29, 2021), docketed as CEQ-2021-0001-0011.

(3) Restoring the earlier version of the regulations "will better clarify the effects agencies need to consider in their NEPA analyses and may even help avoid delays in NEPA reviews" (*id.* at 55,764/1).

These justifications are inadequate. As discussed above, it is incoherent for CEQ to cite avoiding delay (with no substantiation of its belief that delay might occur in the absence of rescission) or agency confusion, given its complete disregard of the Reform Rule's identification of the causes of and solution to delay, and its recent (illegal) prolongation of the process for other agencies to resolve any confusion. CEQ now privileges convenience to other federal agencies over the Reform Rule's decision to fix a broken process. And again, there is (conclusory) reference to delay, which is in tension with both the Proposal's ignoring the central theme of the Reform Rule, and with the Proposal's elsewhere explicitly privileging other factors over delay.

Adding "cumulative effects"

CEQ offers four chief justifications with respect to this proposed change:

(1) It will prevent "confusion" (86 Fed. Reg. at 55,764/2);

(2) "Federal agency NEPA practitioners" complained about the removal of this term from the regulations (*id.* at 55,764/2);

(3) Removal will align CEQ's regulations with longstanding prior practice (*id.* at 55,764/3-55,765/1); and

(4) CEQ is not aware of evidence that evaluation of cumulative effects "necessarily leads to longer timelines" (*id.* at 55,7645).

The analysis in this section is threadbare and incoherent. Notably, CEQ in this proposal acknowledges that the Reform Rule did *not* exclude so-called "cumulative" effects from NEPA analysis so long as those effects are reasonably foreseeable. 86 Fed. Reg. at 55,764/2 ("The 2020 Rule's deletion of the definition of 'cumulative impacts' did not exclude reasonably foreseeable effects from consideration merely because they could be categorized as cumulative effects."). But then CEQ expresses concern that people might *think* that this is what the Reform Rule did. *Id.* ("However, CEQ considers the deletion of the longstanding term to have the potential to create confusion about when and if agencies should analyze cumulative effects, and creates uncertainty regarding this type of effects analysis contrary to longstanding agency practice and NEPA's purpose."). CEQ cites concerns expressed by "Federal agency NEPA practitioners," "outside stakeholders," and "public comments received on the proposed 2020 rule"—without providing any further attribution or detail. *Id.* at 55,764/2-3.

CEQ misunderstands the 2020 Rule's change to the definition of "effects." Part of what motivated that change was the difficulty that agency officials had

understanding the concept of "cumulative impact." Effects may be either "direct" or "indirect." Those two categories of effects exhaust the metaphysical universe of possible effects of a proposed action; there cannot, in the universe as we understand it, be a third category of possible effects of an action. Rather, the 1978 Regulation's ill-chosen terminology of "cumulative impacts" merely sought to clarify that when the agency considers the "affected environment" it should not consider that environment as a frozen snapshot in time, but should also take into account the impacts of other, unrelated actions, and of natural processes. A proper study of "affected environment" under Section 1502.15 will take such dynamic "cumulative" factors into account. The NEPA statute does not require agencies to study the effects or impacts of actions other than the proposed action that triggers NEPA.

The 2020 Rule revised Section 1502.15 to ensure that the environmental trends and effects of unrelated actions are properly accounted for as part of the analysis of "affected environment." As CEQ stated in the Preamble to the 2020 Rule:

> Additionally, the final rule adds a clause to emphasize that the affected environment includes reasonably foreseeable environmental trends and planned actions in the affected areas. This change responds to comments raising concerns that eliminating the definition of cumulative impact (40 CFR 1508.7) would result in less consideration of changes in the environment. To the extent environmental trends or planned actions in the area(s) are reasonably foreseeable, the agency should include them in the discussion of the affected environment. Consistent with current agency practice, this also may include non-Federal planned activities that are reasonably foreseeable.

85 Fed. Reg. at 43,331/1-2. Again, CEQ does not appear to understand the change made by the 2020 Rule, or the effect of what it is now proposing. CEQ is proposing to rescind the 2020 Rule's elimination of "cumulative impacts" from the definitional section in Section 1508, but not the 2020 Rule's corresponding addition of a cumulative impacts concept to the provision on "affected environment" in Section 1502.15. In effect, CEQ is – apparently unwittingly – proposing to require the same basic "cumulative impacts" analysis in both the section on "affected environment" (Section 1502.15) *and* the section on "environmental consequences" (Section 1502.16). Thus, CEQ's proposal would create a duplicative cumulative impact analysis that was not present even under the original 1978 Regulation. CEQ's failure to understand the nature of the Reform Rule or the effects that its proposed changes would have on the regulations' operation as a whole is further evidence that the Proposal is irrational and cannot be considered to reflect reasoned, expert decision making.

Removing limitations on effects analysis

The Reform Rule replaced the extra-statutory categories of effects discussed above with a new, across-the-board test for which effects an agency must analyze:

> *Effects* or *impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a

> reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.

85 Fed. Reg. at 43,375/1 (Final Reform Rule) (setting forth 40 CFR 1508.1(g)); *see also id.* ("A 'but for' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA") (setting forth 40 CFR 1508.1(g)(2)). (These changes were intended in part to conform the NEPA implementing regulation to the NEPA statute as clarified by the Supreme Court in *Department of Transportation vs. Public Citizen*, 541 U.S. 752 (2004).)

The Proposal would rescind this provision of the Reform Rule. It gives six chief justifications:

(1) CEQ now believes that the definition of "effects or impacts" adopted in the Reform Rule is internally inconsistent, because the language quoted above provides that this term "may" include effects "later in time or farther removed in distance," while a subsection of the definition provision states that effects "should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain" (86 Fed. Reg. at 55,765/3-55,766/1) (citing 40 CR 1508.1(g) and (g)(2));

(2) CEQ now believes removing the definition adopted in the Reform Rule will better align its regulations with the statutory text, which does not contain qualifiers on the effects to be analyzed (*id.* at 55,766/1);

(3) CEQ now believes the provision of the Reform Rule providing that a "but for" causal relationship is not sufficient to require NEPA analysis is "confusing" and "could cause agencies to omit reasonably foreseeable effects in NEPA reviews" (*id.* at 55,766/1-2);

(4) CEQ observes that the Supreme Court's opinion in *DOT v. Public Citizen*, 541 U.S. 752 (2004), which the Reform Rule in part relied on to justify the new definition, did not forbid agencies from considering a broader range of effects in scenarios other than the one presented in that case (*id.* at 55,766/2-3);

(5) CEQ now believes it's appropriate to rescind this provision because it is important to give acting agencies "discretion" to determine the appropriate scope of their NEPA analyses (*id.* at 55,765/3, 55,766/3); and

(6) CEQ now believes that providing "clarity" to agencies and the public "outweigh[s] any uncertain potential for shorter timeframes" (*id.* at 55,767/1.

These justifications are not adequate to support the proposed rescission of this aspect of the Reform Rule. Puzzlingly, CEQ asserts that "the standard under NEPA has long been whether effects are reasonably foreseeable," 86 Fed. Reg. at 55,766/2, which undermines its claim that this is an unfamiliar or confusing formulation that it now proposes to rescind. The concern about agency flexibility ignores the Reform Rule's extensive discussion of the need for a unified approach in its Response to Comments, as discussed above. This proposed rescission ignores the obvious alternative approach of further modifying the new "reasonably foreseeable" test rather than completely abandoning it. The fact that rescission would realign the regulations with the *status quo ante* is a tautology, not a reasoned explanation for proposing rescission. And while CEQ is correct that NEPA's text does not contain the formulation that the Reform Rule adopted, the statute also does not contain the terms "direct," "indirect," and "cumulative." (Notably, the Reform Rule never expressly acknowledges that these are *non-statutory* terms that it is proposing to restore to the regulations.)[8]

In the 2021 Proposal, CEQ misunderstands the key insight of *Public Citizen*. It is true, as CEQ notes, that agencies are free to consider factors in addition to those that NEPA requires when conducting an environmental review. But CEQ was "established by NEPA with authority to issue regulations interpreting it," 541 U.S. at 757, not with authority to issue regulations expanding on NEPA's requirements for a legally sufficient EIS. Nothing invites more confusion than for the NEPA implementing regulations to expand the scope of effects that agencies must consider under NEPA beyond those that the statute itself requires. As the Supreme Court warned in *Public Citizen*, "Where the preparation of an EIS would serve 'no purpose' in light of NEPA's regulatory scheme as a whole, no rule of reason worthy of that title would require an agency to prepare an EIS." *Id.* at 767.[9] *Public Citizen* made clear that the effects considered under NEPA must not only be "reasonably foreseeable," but must also have "a reasonably close causal relationship between the environmental effect and the alleged cause," which the Court analogized to proximate causation in torts. *Id.* (internal quotation marks omitted). The Supreme

[8] By contrast, the Proposed Reform Rule Proposal did discuss this fact. "While NEPA refers to environmental impacts and environmental effects, it does not subdivide the terms into direct, indirect, or cumulative." 85 Fed. Reg. at 1,707/3.

[9] For this reason, CEQ's proposal to remove the Reform Rule's exclusion of effects that an agency has no ability to prevent is not in keeping with the statute as interpreted by *Public Citizen*. *See* 86 Fed. Reg. at 55,766/2. CEQ's explanation for this proposed change is that "agencies may conclude that analyzing and disclosing such effects will provide important information to decision makers and the public. . . . Reasonably foreseeable environmental effects do not fall neatly within discrete agency jurisdictional or regulatory confines; rather, agencies make decisions about reviews and authorizations that have real world impacts, including effects like water or air pollution that are measurable and ascertainable yet may have physical effects outside an agency's statutory purview." *Id.* Precisely what CEQ means to suggest here is unclear, but it appears to now believe that NEPA analysis should expand to *all* effects, even if they are entirely outside the agency's statutory authority to mitigate or prevent—and regardless of such expanded analysis' effect on the burden and delay of the NEPA process, or its potential to create confusion as to the metes and bounds of agency authority. This is not recognizable as a rule of reason.

Court ruled that "under NEPA and the implementing CEQ regulations, the agency need not consider effects" beyond those that bear a reasonably close causal relationship to the alleged cause. *Id.* at 770.

The Reform Rule's revision to the definition of "effects" accords with the Supreme Court's construction of the statute. CEQ claims that its proposal to delete the language of *Public Citizen* from the NEPA implementing regulation "is consistent with the U.S. Supreme Court's decision in *Department of Transportation v. Public Citizen*" but it plainly is not, for it deletes the crucial requirement that studied effects bear "a reasonably close causal relationship" to the alleged cause. Therefore, in the Proposal, CEQ is embracing a version of the rule of reason that the Supreme Court has explicitly held to be invalid.

Finally, CEQ again explicitly privileges the needs of agencies over the risk of delay. As explained above, this is contradictory to the (unacknowledged by the Proposal) central problem formulation and policy choices of the Reform Rule, and no explanation is given for this departure. It also reveals a contradiction running throughout the Proposal: Does CEQ believe that the pre-2020 regime *did not cause* excessive delay, or does it believe that delay is an *acceptable* (or unavoidable) cost of implementing what it understands to be NEPA's requirements? A proposed rule that leaves the reader guessing as to so many fundamental aspects of its design and reasoning violates *Fox*, *State Farm*, common sense, and principles of transparency and good government.

2. Deficiencies in impact analysis and empirical support in 2021 proposed rollback as compared to 2020 Trump Administration rulemaking

CEQ issued a Regulatory Impact Analysis (RIA) for the 2020 Reform Rule. It is not doing the same for the Proposal. Instead, Biden Administration has only issued a "special environmental assessment" in connection with the new Proposal.

This new proposal lists as one of its main purposes ensuring informed decision making. It's ironic, then, that the new proposal is accompanied with *less* publicly visible analysis and documentation than the Trump action that it proposes to rescind. Part of the purpose of developing an RIA is to establish what the purpose of the action is and what problem the action is trying to solve. Instead of going through that process, which the 2020 Reform Rule did with directness and prominence, as discussed above, the 2021 Proposal provides no such discussion.

The only attempt at impact analysis provided within the Proposal is a conclusory statement that the proposed changes would "remove uncertainty" and that the changes could result in actually speeding up the environmental review process. CEQ takes comment on whether this assumption is accurate, albeit in the most general and open-ended terms possible: it "invites public comment on those expected impacts and the role they should play in informing the final rule." 86 Fed. Reg. at 55,767/2. This is not a meaningful proposal of any content on which to comment, or a meaningful solicitation of comment on any particular proposed findings. It is more

akin to the type of solicitation one would expect in an Advanced Notice of Proposed Rulemaking, which is more appropriate for the stage at which CEQ clearly finds itself: wishing to change course but with not even the vaguest understanding of what the impact of doing so will be, and without having properly engaged with the thorough and comprehensive Reform rulemaking that it conducted a year ago.

In addition to its own analysis of the length of delays in NEPA reviews that had developed under the 1978 regulatory regime, the Reform Rule also garnered overwhelming support from key stakeholders and groups in civil society identifying the serious degree of those delays, and how the reforms would expedite the process and provide significant benefits. The Proposal grapples with none of this; reading it one would think that the Rule was designed to address a nonexistent policy problem.

Some examples of those include:

- The Bipartisan Policy Center stated that their Executive Council on Infrastructure identifies regulatory delays as one of the key obstacles to private investment in American infrastructure projects.[10]
- The Citizens for Responsible Energy Solutions Executive Director stated that the 2021 Reforms "streamline an environmental review process that had become synonymous with illogical business practices, special interest favoritism, and government overreach" and that cutting "six years of red tape from a clean energy project like a nuclear plant or modernize wind farms [will result in] six years of fewer emission in our atmosphere from conventional sources of power."[11]
- The President and CEO of the Fertilizer Institute observed that one producer had spent a decade and $20 million in pursuit of permits to grow jobs and instill economic prosperity in a community still reeling from economic stagnation, only to remain unsure of its ultimate fate.[12]
- The President of the National Association of Realtors stated, "Since NEPA was last updated four decades ago, the real estate industry has seen countless infrastructure modernization projects paralyzed by arbitrary delays and unreasonable cost increases, barriers which today are felt more heavily because of the COVID-19 pandemic." See the NEPA WTAS for additional information on the benefits of the 2020 Reform Rule.

While the Reform Rule provided elaborate and well-signposted analysis of each section of the then-Byzantine NEPA regulations it proposed to modify and the potential economic and environmental impacts, the Proposal does not look into how

[10]CEQ, What They Are Saying –CEQ Issues Final Rule to Modernize its NEPA Regulations (July 2020) at 20, *available at* https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/01/NEPA-FINAL-What-They-Are-Saying-clean.pdf (last visited Nov. 5, 2021). We incorporate this document by reference in these comments and attach it hereto.

[11] *Id*. at 21.

[12] *Id.*at 23.

the changes being proposed would impact the NEPA and permitting process and why these three specific actions are being modified while the rest of the 2020 Reform Rule is not being modified – at least yet. As explained above, CEQ does not identify any meaningful criteria that it used to choose which provisions to propose to rescind in this first phase, and gives the public no hint of what repeals it intends to effect in Phase 2.

This leads to the other issue of CEQ hiding the ball on the impacts of the various actions. CEQ has signaled that there is a Phase 2 coming, but it is not possible to evaluate the impact of the overall significant modifications to CEQ's regulations. CEQ has improperly fragmented what it previously treated as an interdependent, carefully calibrated regulatory whole, breaking it into pieces to conceal the actual impact of rescinding each key provision. As there is significant interplay and overlap between provisions with the 2020 Reform Rule, picking and choosing specific aspects to "roll back" and then committing to do more prevents the public from being able to properly comment. How can we appropriately comment on the economic and environmental effects of changing the definition of impacts without knowing how much the Biden Administration wishes to require with respect to climate change? How can we appropriately comment on "purpose and need" without knowing how the Biden Administration wishes to define alternatives? How can we know the impacts of any of these changes without knowing how the Biden Administration will change the litigation requirements the 2020 Reform Rule established?

The answer is we cannot properly provide public comments on the economic and environmental impacts when we have only been provided a partial rule. The ostensible pendency of Phase 2 must not prevent us from being able to comment on Phase 1. CEQ is playing a shell game to prevent the public from properly analyzing and providing comment on the true effects of this proposed action.

CONCLUSION

The 2021 Proposal undermines the purpose and benefits of the 2020 Reform Rule without ever acknowledging what that purpose and those benefits were. The only explanation for this is that the Biden Administration cannot acknowledge the truth: the Trump CEQ Reform Rule regulations reduced unnecessary burden, decreased unnecessary paperwork, and cleared away a thicket of extra-statutory, esoteric, and self-perpetuating procedures far beyond what CEQ contemplated in 1978, let alone Congress's original mandate—all without undermining legitimate environmental concerns. The Biden Administration is acquiescing to environmental extremists and special interest groups who do not care about modernizing American infrastructure and maintaining our competitiveness, and are more concerned with the comfort of entrenched bureaucrats than the urgent task of balancing environmental stewardship and our nation's economy. CEQ should abandon these farcical proceedings and undo its illegal extension of the deadline for other agencies to follow its lead in reforming the NEPA process.

ATTACHMENT A

Comments of AFPI & Texas Public Policy Foundation's Life:Powered on CEQ's interim final rule, 86 Fed. Reg. 34,154 (June 29, 2021), delaying certain deadlines in the Reform Rule, filed July 29, 2021, and docketed as CEQ-2021-0001-0011

July 29, 2021

VIA ELECTRONIC FILING

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RE: Deadline for Agencies To Propose Updates to National Environmental Policy Act Procedures, 86 Fed. Reg. 34154, June 29, 2021, [Docket No. CEQ-2021-0001]

Ms. Coyle:

Please see the below comments from the America First Policy Institute and the Life:Powered project Re: Deadline for Agencies To Propose Updates to National Environmental Policy Act Procedures, Docket No. CEQ–2021–0001. Thank you for the opportunity to comment.

I. INTRODUCTION

In an effort to nullify a valid regulation without proceeding through the appropriate notice and comment process, the Council on Environmental Quality (CEQ) has taken an action with potential procedural and substantive legal defects that will thwart the implementation of a major reform action that CEQ took only 1 year ago. On June 29, 2021, CEQ published an "interim final rule" in the Federal Register (the Delay Rule). The Delay Rule extends by 2 years (from September 2021 to September 2023), a deadline in CEQ's 2020 Reform Rule. The deadline is for agencies to propose new regulations to implement reforms to their functions under the National Environmental Policy Act (NEPA) to correspond to the reforms made by CEQ in the Reform Rule. In using the "interim final rule" mechanism, CEQ did not provide the public with notice or an opportunity to comment before it extended this deadline. In the same notice announcing the extension, however, it also solicited comment from the public after the fact. It appears this deadline delay is simply an attempt to gut the implementation of the Reform Rule, buying CEQ time to change it through a forthcoming new rulemaking process while in the meantime preventing the Reform Rule's reforms from fully taking place. By eliminating the need for the various federal agencies promptly to conform to the Reform rule, CEQ is depriving Americans of the benefit of these crucial reform regulations without engaging in notice and comment before doing so and without providing a reasoned basis for doing so.

The Biden Administration is free to put its own gloss on the regulations implementing NEPA. To do so, it can attempt to revise or repeal the existing Reform Rule. But any Administration must observe the legal requirements for doing so, it must give adequate explanations for doing so, and while that Rule remains on the books, it must abide by it.

CEQ has delayed by 2 years a deadline for a key step in implementing the Rule's reforms. The NEPA Reform Rule's 1-year deadline for agencies to begin their part in the reform process was adopted through full notice-and-comment rulemaking procedures, with ample opportunity for public input and policy deliberation. The Biden Administration's Delay Rule kicks this deadline out another 2 years, without notice or comment, and with no valid reason given.

The Delay Rule harms the people of the United States by depriving them of needed infrastructure reforms and erodes the rule of law by altering a duly promulgated regulation in an arbitrary and capricious manner and without observing procedures required by law. CEQ must reverse course, abandon its illegal Delay Rule, and in the future only pursue whatever policy changes it may wish through the appropriate and required procedures. Until and unless CEQ alters the Reform Rule through proceedings that are both rationally grounded and legally compliant, it and the Administration as a whole must abide by that Rule and its binding and badly needed reform provisions and procedures.

Section II of these comments explains who we, the commenters, are and our interest in NEPA reform. Section III provides background concerning the Reform and Delay Rules and the policy problems that the Reform Rule addressed. Section IV analyzes the Delay Rule's deficiencies, both (A) procedural (failure to take notice and comment before acting) and (B) (arbitrary and capricious).

II. AFPI AND LIFE:POWERED

The America First Policy Institute (AFPI) is a 501(c)(3) non-profit, non-partisan research institute. AFPI exists to conduct research and develop policies that put the American people first. Our guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do.

One of AFPI's core priorities is ensuring that America is a nation that can build and prosper. That's AFPI's public policy interest in CEQ's 2020 NEPA Reform Rule, which is instrumental to a prosperous America. These comments explain why that Rule's reforms are needed and why CEQ's "interim final rule" delaying a key part of the Reform Rule is problematic as a matter of law and policy. AFPI supports the implementation of the Reform Rule as it was originally issued, including its carefully chosen 12-month deadline for other agencies to propose their corresponding reforms.

The Life:Powered project is a national initiative of the Texas Public Policy Foundation, a 501(c)(3) non-profit and non-partisan research institute, to raise America's energy IQ. Our primary objective is to advocate for energy and environmental policies that promote economic freedom and advance the human condition.

The growing abuse of NEPA to arbitrarily restrict infrastructure development and promote anti-growth agendas is why the 2020 NEPA Reform Rule was a significant advance in this policy arena. Environmental laws should exist to serve humanity, not the other way around. Delaying the implementation of the Reform Rule will delay the benefits the rule can provide while serving no objective other than giving the new administration time to figure out how to change it. This delay is illegal as implemented because it is arbitrary and capricious, and procedurally deficient, and it should not stand.

III. Background: 2020 Reform Rule and 2021 Delay Rule

A. 2020 Reform Rule Background

NEPA of 1969, 42 U.S.C. § 4342 *et seq.*, requires federal agencies to consider whether their major actions will have significant environmental impacts. If they will, the agency must conduct a study of those impacts. As CEQ observed in proposing and finalizing the Reform Rule, over the half-century since NEPA was enacted, and the more than 40 years since CEQ first issued implementing regulations, "the NEPA process has become increasingly complicated and can involve excessive paperwork and lengthy delays." 85 Fed. Reg. 43,304, 43,305/2 (July 16, 2020) (final Reform Rule); *see also id.* at 43,305/2-3; 85 Fed. Reg. 1,684, 1,687/3 (Jan. 10, 2020) (proposed Reform Rule) ("[T]he process for preparing [Environmental Impact Statements] is taking much longer than CEQ advised, and . . . the documents are far longer than the [prior] CEQ regulations and guidance recommended.") (citing CEQ studies demonstrating that only a quarter of NEPA analyses take less than 2.2 years and 25 percent take more than 6 years, contrasted to CEQ's expectation in 1981 that even complex projects should not require more than 1 year for NEPA analysis).

In 2009, then-Vice President Biden visited a bridge in Middletown, Pennsylvania, for a groundbreaking ceremony to promote federal funding from the American Recovery and Reinvestment Act. He discovered that the bridge was not "shovel ready" due to issues with the permits. This problem of continuing delays for infrastructure projects would endure for another decade.

In the final Reform Rule, CEQ concluded that "[a]lthough other factors may contribute to project delays, the frequency and consistency of multi-year review processes [under NEPA] for projects across the Federal Government leaves no doubt that NEPA implementation and related litigation is a significant factor." 85 Fed Reg. at 43,305/3. CEQ noted that the average NEPA environmental analysis is now some 660 pages in length, with a 25 percent of analyses 748 pages or longer, contrasting this with CEQ's expectations in its original implementing regulations, which anticipated that the typical analysis would be 150 pages long. *Id.* at 43,305/3-43,306/1. CEQ diagnosed a key aspect of the problem: agencies over the decades had responded to litigation risk "by generating voluminous studies analyzing impacts and alternatives well beyond the point where useful information is being produced and utilized by decision makers." *Id.* at 43,305/3.

To address these issues, in 2020, CEQ proposed the first comprehensive update to its regulations implementing NEPA since those regulations were initially promulgated in 1978. CEQ received more than a million comments on its proposed regulations. Later in 2020, CEQ finalized the rule, incorporating the feedback from comments, and revised its implementing regulations to better implement NEPA, serve more faithfully the original purpose of the 1978 regulations, and bring increased rationality and reduce unnecessary complexity in the thicket of complications that had accrued over the decades. Among other reforms, the Reform Rule revised CEQ's NEPA implementing regulations to establish presumptive time and page limits to the review process, enhance interagency cooperation and avoid unneeded reduplication of effort, and set a 2-year goal for completion of environmental review. *See* 85 Fed. Reg. at 43,313/2 *et seq.* CEQ also eliminated from its regulations terms (such as "indirect" and "cumulative" effects) that do not appear in the NEPA statute and that CEQ determined had contributed to "confusion and unnecessary litigation," *see id.* at 43,343/2. Its policy goal was "to focus agency time and resources on considering whether the proposed action causes an effect rather than on categorizing the type of effect." *Id.* at 43,343/3.

CEQ's regulations provide the framework for every other agency's own procedures to govern their implementation of NEPA. The Reform Rule included a requirement for each agency to "develop or revise, as necessary, proposed procedures to implement" CEQ's NEPA regulations, "including to eliminate any inconsistencies" therewith. 85 Fed. Reg. at 43,372/2 (codified at 40 CFR 1507.3(b)). The Reform Rule set a deadline for these proposals of September 14, 2021 (a year after the effective date of the Reform Rule), or 9 months after the creation of a new agency, whichever comes later. (These comments will refer to this as "the deadline" or "the 12-month deadline".)

Of the multiple legal challenges to the rule, the most significant was in the United States District Court for the Western District of Virginia. The Court denied the plaintiffs' motion for a preliminary injunction on September 11, 2020, and the Rule took effect three days later. On June 21, 2021, the court dismissed the suit for lack of jurisdiction. *Wild Virginia v. CEQ*, No. 20-45 (W.D. Va. filed July 29, 2020), ECF Nos. 92, 155.

B. Current Administration and 2021 Delay Rule Background

The Biden Administration has sent multiple signals that it does not support the Reform Rule and intends significantly to revise or repeal it. As the Delay Rule recites, a "White House Fact Sheet" officially issued on the Biden Administration's first day flagged the Reform Rule for review, *see* 86 Fed. Reg. at 34,155/2 & n.9. (Notably, the Biden transition had flagged the Reform Rule, among other actions, even before the Administration officially began.) In a declaration submitted to support its motion for remand of the Reform Rule without vacatur, CEQ told the district court that it "has substantial concerns" about the Reform Rule and its effects and that it "has commenced a comprehensive reconsideration" of the Rule. Declaration of Matthew Lee-Ashley, *Wild Virginia v. CEQ*, No. 20-45 (W.D. Va. filed Mar. 17, 2021), ECF No. 145-1, at 3, 5.

On April 16, 2021, Interior Secretary Deb Haaland issued Secretarial Order No. 3399, *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process*, § 5(a) ("Bureaus/Offices will not apply the 2020 Rule in a manner that would change the application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect on September 14, 2020. . . . If Bureaus/Offices believe that the Department's NEPA regulations irreconcilably conflict with the 2020 Rule, they will elevate issues to the relevant Assistant Secretary and to CEQ."). This approach at Interior is directly contrary to that taken in the Reform Rule, which the Delay Rule did not alter: "Where existing agency NEPA procedures are inconsistent with the regulations in this subchapter, the regulations in this subchapter shall apply . . . unless there is a clear and fundamental conflict with the requirements of another statute." 40 CFR 1507.3(a). (Tellingly, avoiding or eliminating this type of confusion and conflict between CEQ's regulations and other agencies' was a key aim of the Reform Rule's inclusion of the requirement that other agencies revise their NEPA procedures.)

On June 11, 2021, the Biden Administration released its Spring 2021 Unified Regulatory Agenda. This projected three actions relevant to the Reform Rule: the Delay Rule (which would be issued at the end of that month); a "Phase I" rulemaking to propose "narrow" changes to the Reform Rule (proposal projected for July 2021); and a "Phase II" rulemaking to propose "broader" changes (proposal projected for November 2021).

On June 29, 2021, CEQ published an "interim final rule" in the *Federal Register*. *Deadline for Agencies To Propose Updates to National Environmental Policy Act Procedures*, 86 Fed. Reg. at 34,154 (June 29, 2021) (the Delay Rule). This action extended the deadline for agencies to propose NEPA reforms to implement NEPA and the Reform Rule from 12 months following the effectiveness of the Reform Rule (or September 14, 2021) to 3 years after that date (or September 14, 2023). *See id.* at 34,154/2, 34,158/2. The action was not preceded by public notice and opportunity for comment, although CEQ did solicit comment after the fact, *id.* at 34,154/2.

IV. Analysis of the Delay Rule

The Delay Rule does not even acknowledge the Reform Rule's primary motivation: to remove unneeded delays, complexities, and burdens associated with the NEPA process. The Delay Rule does not on its face depart from the Reform Rule's view of the world or from its reasoning for choosing a new policy approach to NEPA implementation. While the Delay Rule raises many doubts and concerns, it makes no definitive statements in this regard; it does not explain whether it disagrees with the Reform Rule's view that the pre-2020 NEPA process had become in many instances unduly complex and burdensome; it shows no substance of what CEQ's preferred alternative approach to NEPA implementation now is. All the Delay Rule does is delay the timeline under which the benefits of the Reform Rule would more fully flow to the American people through its implementation by other agencies.

As discussed below, CEQ's failure to conduct any substantive analysis specifically regarding the 12-month deadline is a major legal defect in the Delay Rule. But the Delay Rule's broader silence on the Reform Rule's policy goals illustrates how the Delay Rule replaces a carefully calibrated policy structure with one that only causes further delay and confusion. Under the Reform Rule, other agencies were required to propose their corresponding NEPA reforms no later than September 2021. CEQ selected this deadline, as discussed below in more detail, to balance avoiding disrupting and overburdening agency activities against the need to expeditiously achieve consistency in implementing NEPA reforms across the executive branch.

Now, with the deadline abruptly extended to September 2023 alongside indications that CEQ intends (unspecified) changes to the underlying Reform Rule, project proponents, and acting agencies are left uncertain as to what regulation or regulations govern and will govern review of key infrastructure projects and other major federal actions. This will deter American companies, American investors, and local American governments from planning, building, and repairing in this country. It will stifle American employment and hurt the competitiveness of American industry to the extent NEPA review is necessary before key authorizations or funding can issue. It leaves the Reform Rule's work unfinished, while CEQ "embarks on [a] multiyear voyage of discovery" in its intended attempts to revise that Rule. *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 328 (2014). And it does this without enunciating any clear policy reason for doing so, let alone for ignoring the policy problem that led to the Reform Rule in the first place.

As an initial matter, the Delay Rule does not cite any statutory authority. It implicitly depends on the same authority that CEQ used to issue the Reform Rule in the first instance, and it is bound by all the same procedural and substantive legal requirements. *See, e.g.*, *Clean Air Act Council v. Pruitt*, 862 F.3d 1, 8-9 (D.C. Cir. 2017) ("Agencies obviously have broad discretion to reconsider a regulation at any time. To do so, however, they must comply with the Administrative Procedure Act . . . .").

The Delay Rule violates the requirements of the Administrative Procedure Act (APA) in two main respects: (A) it was not preceded by public notice and solicitation of comment, and (B) it is arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A), (D) (courts shall hold unlawful and set aside agency action that is arbitrary and capricious or "without observance of procedure required by law").

A. The Delay Rule Violates the APA's Notice and Comment Requirement

CEQ offers two justifications for not soliciting public comment before issuing the Delay Rule. *First*, CEQ claims the Delay Rule is exempt from the APA's and comment requirements because it is a rule "of agency organization, procedure, or practice," 86 Fed. Reg. at 34,156/1; *see* 5 U.S.C. § 553(b)(A). *Second*, in the alternative, CEQ purports to find "good cause" for issuing the Delay Rule without first taking comment, 86 Fed. Reg. at 34,156/2; *see* 5 U.S.C. § 553(b)(B). CEQ is wrong on both points.

(i) The Delay Rule Is Not Merely an Internal Rule

CEQ characterizes the Delay Rule and the underlying deadline in the Reform Rule that it extends as "procedural"; "purely procedural,"; of "no substantive effect,"; and "merely establish[ing] an internal deadline." 86 Fed. Reg. at 34,156/1-2. It is on this basis that CEQ asserts that "amending that deadline fits within the category of procedural rules exempted from notice-and-comment rulemaking." *Id.* at 34,156/2. CEQ's kaleidoscope of characterizations cannot obscure the fact that the Delay Rule is not subject to this exception from the notice and comment requirement. The Delay Rule (and the deadline it delays) does impact parties outside the federal government, and it disturbs a specific policy and value judgment that the Reform Rule made, and CEQ's invocation of this exemption is improper.

Without other agencies revising their NEPA regulations where necessary to ensure conformity with the Reform Rule and the underlying statute, outside parties who need a major federal action to undertake or carry out a project will be left in confusion as to what regulations will govern NEPA analysis in their situation—the Reform Rule? The other agency's regulations? This confusion is exacerbated by moves such as the Interior Secretary's Order discussed above. Such confusion is one reason why CEQ's Reform Rule required agencies to undertake revisions to their NEPA procedures and gave them a deadline to do so. Eliminating this confusion is necessary to realize the full benefits of the Reform Rule. Until such time as CEQ may depart from the Reform Rule in a legally sound way, it remains the binding policy of the federal government.

CEQ further asserts in this context that delaying the deadline "does not encode a substantive value judgment . . . but rather merely avoids . . . wasted resources," 86 Fed. Reg. at 34,156/1 (internal quotation marks and alteration omitted) (citing *Public Citizen v. Dep't of State*, 276 F.3d 634, 641 (D.C. Cir. 2002)). Not so. As discussed in more detail below in the *Fox* analysis, the Reform Rule selected a 12-month deadline through an express balancing of competing values, considering the burden on and disruption to agencies but also the need for consistency in the performance of their duties under NEPA. *See* 86 Fed. Reg. at 43,340/2 (final rule) ("a balance between minimizing the disruption to ongoing environmental reviews while also requiring agencies to revise their procedures in a timely manner to ensure future reviews are consistent with the final [Reform] rule."). That is CEQ exercising judgment, and it can't be separated from the policy choices and value judgments of the Reform Rule as a whole, of which this deadline was a functional part. The 12-month deadline is not a meaningless floating target with no real-world impact and no underlying policy choice. That is why CEQ must observe notice-and-comment requirements before altering it.

(ii) CEQ Has Not Shown "Good Cause" for Not Taking Comment Before Acting

Perhaps signaling a lack of faith in its argument that the Delay Rule is merely an internal procedural rule, CEQ makes a fallback argument: it claims to have had "good cause" to have forgone notice and comment before issuing this 2-year delay. 86 Fed. Reg. at 34,156/2. The APA provides that an agency may be exempt from notice and comment requirements if it "for good cause finds . . . that notice and

public procedure . . . are [1] impracticable, [2] unnecessary, or [3] contrary to the public interest." 5 U.S.C. § 553(b)(B). CEQ invokes all three prongs of this "good cause" exception. None of them apply here.

As a threshold matter, courts "have repeatedly made clear that the good cause exception is to be narrowly construed and only reluctantly countenanced." *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012). "The exception excuses notice and comment in emergency situations, or where delay could result in serious harm. . . . [T]he exceptions at issue here are not 'escape clauses' that may be arbitrarily utilized at the agency's whim. Rather, use of these exceptions by administrative agencies should be limited to emergency situations . . . ."). *Id.* (second alteration in original) (internal quotation marks omitted) (citing *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004); *Am. Fed. of Gov't Emps. v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981). "Notice and comment can only be avoided in truly exceptional emergency situations, which notably, *cannot arise as a result of the agency's own delay*." *Washington Alliance of Technology Workers v. U.S. Dep't of Homeland Security*, 202 F. Supp. 3d 20, 26 (D.D.C. 2016) (emphasis added) (citing *Envt'l Def. Fund, Inc. v. EPA*, 716 F.2d 915, 920-21 (D.C. Cir. 1983) ("[T]he imminence of the deadline permits an agency to avoid APA procedures only in exceptional circumstances. Otherwise, an agency could simply wait until the eve of an administrative deadline, then raise up the 'good cause' banner and promulgate rules without following APA procedures. That is what happened in this case, and the agency's action, therefore, falls outside the scope of the good cause exception.") (internal quotation marks and alterations omitted). For the reasons discussed below, CEQ's invocation of "good cause" here is the paradigm of an "arbitrar[y] . . . whim." *Mack Trucks*, 682 F.3d at 93.

(a) CEQ Has Not Shown Complying with the Notice and Comment Requirement Would Have Been "Impracticable"

Turning to CEQ's invocation of the prongs of the "good cause" exception: *First*, CEQ claims that it would be "impracticable" to take comment before delaying the deadline. Specifically, CEQ argues that observing "an ordinary [i.e., the legally required] notice and comment process" to delay the deadline "is impracticable . . . because there is not enough time to conduct an adequate public comment process and complete the rulemaking before the September 14, 2021 deadline." 86 Fed. Reg. at 34,156/2-3. And *second*, CEQ argues as a fallback that, even if this were not so, agency revisions to their NEPA procedures "*may* be substantial and require significant lead time for agencies to complete before September 14, 2021"; because developing agency NEPA procedures "*typically* involves significant coordination." *Id.* at 34,156/3 (emphases added).

As an initial matter, CEQ provides only a conclusory assertion that "there is not enough time" between June 2021 (the date of the signature and publication of the Delay Rule, as discussed in more detail below) and September 2021 to follow the law. Without any explanation of why this is so, CEQ has not shown impracticability. But even accepting for the sake of argument that this is not enough time, CEQ simply cannot cite tight timing as "good cause" here because that situation "ar[ose] as a result of the agency's own delay." *Washington Alliance of Technology Workers*, 202 F. Supp. at 2016.

The latest date of the occurrences that CEQ cites in its explanation of why it is reviewing the Reform Rule is January 27, 2021, the date of Executive Order 14,008. *See* 86 Fed. Reg. at 34,155/2 (reciting fact and date of that Order); *id.* at 34,156/3 (stating that an earlier Executive Order, Number 13,990, was the instrument that "directed CEQ to commence a review of the [Reform] Rule"). CEQ describes President Biden's Executive Orders 13,990 and 14,008 collectively as having "initiated CEQ's comprehensive review of the [Reform] Rule," 86 Fed. Reg. at 34,156/2. But CEQ's Chair did not sign the Delay Rule until June 22, 2021, and it was not published in the *Federal Register* until June 29, 2021. *See* 86 Fed. Reg. 34,154, 34,158/2 (June 29, 2021). That is, CEQ waited *5 months* after beginning its review of the Reform Rule before delaying without prior comment a key feature of that Rule. CEQ does not provide any reason for this delay, nor does it assert that 8 months (between January and September) would have been insufficient time to obey the law. Any impracticability here is entirely of CEQ's own making, and as such, cannot constitute "good cause" to evade required notice and comment.

(b) CEQ Has Not Shown Complying with the Notice and Comment Requirement Was "Unnecessary"

CEQ argues that taking comments before delaying the deadline is "unnecessary" for three reasons: (1) doing so "will have no impact on the public"; (2) CEQ already took comment on the deadline in the notice-and-comment process that led to the Reform Rule; and (3) the Office of Management And Budget (OMB) has concluded that requiring agencies to report on their progress towards meeting the September 14, 2021 deadline "would be inconsistent with the [Biden] Administration's policies." 86 Fed. Reg. at 34,1563-34,157/1. Reason (1) is incorrect. Reason (2) actually highlights why the Delay Rule is illegal. Reason (3) is irrelevant.

First, in addition to the analysis above explaining why the Delay Rule is not merely internal in nature, it is not the case that the Delay Rule has "no impact on the public": it delays by years, tripling the length selected (through notice and comment) by the Reform Rule, the deadline for agencies beyond CEQ to begin to do their part in NEPA reforms. The Reform Rule affects what information a project proponent must provide a federal agency, what analysis the agency will perform, and how long the analysis will take before the project proponent receives a decision from the agency with respect to necessary permits, funding, and the like. CEQ determined through the Reform Rule rulemaking process that these NEPA reforms were appropriate and necessary. While CEQ is free to attempt to depart from that determination in a rational and procedurally compliant way, major changes to the implementation structure it established presumptively impact the public. It must only be carried out after notice and comment.

CEQ here cites *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 94 (D.C. Cir. 2012). But that opinion actually held that EPA *did not* have good cause to forego notice and comment, and it stresses that this prong of the "good cause" exception "is 'confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and the public.'" *Id.* (quoting *Util. Solid Waste Activities Grp. v. EPA*, 236 F.34d 749, 754 (D.C.

Cir. 2001). *Tripling* the length of a deadline is not "insignificant in nature" and indeed is not the sort of thing that CEQ or any other agency would do "routine[ly]."

Second, the Delay Rule rightly notes that "CEQ accepted public comment on this 12-month deadline before promulgating the [Reform] rule," 86 Fed. Reg. at 34,156/3. But that is all the more reason why it is improper for CEQ to alter that deadline without observing procedural rulemaking requirements. As explained below in the discussion of the *Fox v. FCC* standard, CEQ in the Reform Rule selected the deadline by balancing various policy considerations and after giving public notice and receiving comment. This was a substantive aspect of the Reform Rule. CEQ has now executed a significant change of this aspect, significantly departing from the outcome of the prior, comment-informed rulemaking process. The thorough consideration that CEQ gave this issue in the Reform Rule is yet another reason why further comment was required before taking that step. And the authority CEQ cites cannot help it, *see Priests for Life v. HHS*, 772 F.3d 229, 276 (D.C. Cir 2014). Not only was *Priests for Life* vacated by the Supreme Court, but it only upheld a failure to take comment before acting where "the modifications made in the interim final regulations [were] minor, meant only to augment current regulations in light of the Supreme Court's interim order in connection with an application for an injunction in [another case]." *Id.* (internal quotation marks omitted). Again, tripling the length of the deadline for a key element of the Reform Rule cannot fairly be characterized as "minor," nor did CEQ take this step to respond to an act of a coordinate branch of government.

Third, that OMB revoked a memorandum in which it had set deadlines for agencies to report to it on their progress towards meeting the Reform Rule's deadline has no bearing on whether CEQ needs to take comment before delaying that deadline. OMB is not the agency that oversees the executive branch's implementation of NEPA. OMB did not issue the Reform Rule. OMB's revocation memorandum says nothing of substance about the Reform Rule at all, let alone that Rule's proposal deadline. The revocation memorandum merely says that OMB's earlier memorandum "is *or may be* inconsistent with, or present obstacles to, the [Biden] Administration's policies." Shalanda D. Young, Acting Director, OMB, OMB Memorandum M-21-23: Revocation of OMB Memorandum M-21-01 (Apr. 26, 2021) (emphasis added). (Notably, CEQ's Delay Rule mischaracterizes OMB as affirmatively "hav[ing] *reached the conclusion* that [the prior memorandum] *would be* inconsistent with" those policies. 86 Fed. Reg. at 34,157/1 (emphases added).) Executive Orders cannot override regulations adopted through notice and comment; broad conclusory musing that those Orders *might* be in tension with regulations cannot obviate the need to take comment before changing them.

In a similar vein, the Delay Rule repeatedly notes that the Department of Transportation (DOT) was the only agency that had published its own proposed NEPA reforms prior to the beginning of the Biden Administration, 86 Fed. Reg. at 34,156/2-3; *see* 85 Fed. Reg. 74,640 (Nov. 23, 2020) (DOT proposal). Although the Delay Rule asserts that this "evidences the significant investment of time and resources required for agencies to develop proposed implementing procedures," *id.*, it is unclear how CEQ thinks that this justifies the Delay Rule as a policy matter, let alone

how it justifies revising the deadline without first taking comment. That one agency had beat the 12-month deadline by many months is not evidence that other agencies would fail to meet the deadline, let alone a refutation of the reasons given by CEQ in the Reform Rule for selecting that deadline in the first place, as discussed below. This is, at best, another *non sequitur*. If anything, it shows that CEQ acted wisely when the Reform Rule set a proposal deadline of September 2021 and illustrates the risk of confusion on the part of all stakeholders that could arise from CEQ interrupting the implementation process rather than allowing it to proceed as required by the Reform Rule.

(c) CEQ Has Not Shown Complying with the Notice and Comment Requirement Would Have Been "Contrary to the Public Interest"

CEQ asserts that "keeping the September 14, 2021 deadline without immediate action [i.e., without observing the legally required notice and comment process prior to taking final action] is contrary to the public interest." 86 Fed. Reg. at 34,156/3. CEQ's sole attempt to substantiate this assertion is to claim that observing notice and comment procedures before delaying the deadline "would result in Federal agencies' wasteful expenditure of their resources and personnel to develop proposed procedures to implement a rule that CEQ is reviewing and intends to revise." *Id.*

As an initial matter, CEQ acknowledges that this argument is entirely duplicative of its argument on the "impracticable" prong, *id.* ("*For this same reason* . . . [taking comment before acting] is contrary to the public interest . . . .") (emphasis added). But addressing this "public interest" assertion on its own terms, for the reasons explained both in the "impracticable" prong analysis above, as well as below in the section of these comments explaining why the Delay Rule is arbitrary and capricious, CEQ has not shown that it meets this prong of the APA's notice-and-comment exception. The proposition that delaying a rule is justified due to conclusory assertions of concern that compliance with that rule may be "wasteful" because the agency that issued the rule "is reviewing and intends to revise it" has been rejected by the overwhelming weight of judicial authority. *A fortiori*, such assertions of concern cannot possibly justify foregoing APA notice and comment requirements. Otherwise, any agency could justify delaying any date in any rule, *without taking comment beforehand*, merely by stating that it "intends" to change the rule. Nothing would be left of the notice and comment requirement.

This brief and conclusory assertion of the "public interest" is not an adequate engagement with that crucial concept. Rather, the public interest continues to lie where CEQ determined it lay when CEQ promulgated the Reform Rule in observance with applicable procedural requirements. That is, the public interest lies with other agencies proposing their NEPA reforms by September 14, 2021, a year after CEQ issued the Reform Rule.

Finally, that the United States Supreme Court has recently rejected a challenge to an agency's use of an interim final rule mechanism in another context does not immunize CEQ's Delay Rule. *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), stands for the proposition that an

agency document styled as an "interim final rule" rather than a "proposal" may under some circumstances not be procedurally defective. But the Court noted in there that the rule in question "explained its position in fulsome detail," *id.* at 2385. As explained below, that is far from the case here. *Little Sisters* did not nullify the APA's notice and comment requirement. It did not give agencies *carte blanche* to shoot first and ask for comment later, and CEQ's attempt to do so here is lawless.

(B) The Delay Rule Is Arbitrary and Capricious

Even assuming for the sake of argument that CEQ had properly invoked an exemption that allowed it to avoid taking comment before issuing the Delay Rule, the Rule is not legal if it is arbitrary and capricious. It is just that. *Cf. Little Sisters*, 140 S. Ct. at 2398 & n.2 (Kagan, J., concurring) (agreeing with the Court on the procedural question but noting question, whether the rule was arbitrary and capricious, is "unaffected by" the Court's decision).

CEQ's justifications for delaying the deadline are sparse and vague. The agency says that it "has substantial concerns about the legality of the [Reform] Rule, the process that produced it, and whether [it] meets the nation's needs and priorities, including the priorities set forth in [Executive Order] 13990 and [Executive Order] 14008." 86 Fed. Reg. at 34,155/3. CEQ includes a conclusory list of headlines of these ostensible concerns: "confusion with respect to NEPA implementation"; "break from longstanding caselaw"; and that it "*may* have the have the purpose or effect of improperly limiting relevant NEPA analysis." *Id.* (emphasis added). CEQ also asserts without details that "[f]ederal agencies have raised concerns to CEQ about developing revised procedures" due to the Reform Rule's (unspecified) "inconsistency with" Executive Orders 13990 and 14008, as well as with CEQ's ongoing review of the Rule. On this basis, CEQ asserts that the deadline delay "will address these concerns and allow Federal agencies to avoid wasting resources developing procedures based upon regulations that CEQ *may* repeal or substantially amend." *Id.*

The dates contained within a rule are a substantive aspect of that rule; changing them is a rulemaking subject to the same procedural and substantive requirements that applied to the underlying rule, and it is not permissible for an agency to delay a rule's dates simply because it is contemplating revising or repealing the rule or because it articulates concerns about the rule's soundness (without actually changing the rule or departing from its findings through the required procedures). *See, e.g.*, *S.C. Coastal Conservation League v. Pruitt*, 318 F. Supp. 3d 959, 965-66 & n.2 (D.S.C. 2018) (collecting cases); *Air Alliance Houston v. EPA*, 906 F.3d 1049, 1066-67 (D.C. Cir. 2018) ("EPA repeatedly justifies the 20-month delay as providing time for taking and considering public comment on the [underlying] Rule and any potential revisions or rescission thereof. . . . [But] the mere fact of reconsideration, alone, is not a sufficient basis to delay promulgated effective dates specifically chosen by [an agency] on the basis of public input and reasoned explanation . . . .").

The Delay Rule flies directly in the face of these legal restrictions. CEQ expressly justifies its chosen policy of delay based on the fact that it is taking another

look at the Reform Rule and *may* at some point revise it and by a conclusory recitation of *potential* flaws in the Reform Rule. These ostensible flaws *could*, if determined in a final manner by CEQ through the required procedures and with a properly articulated reasoned basis, potentially constitute a legally valid basis for altering the Reform Rule. CEQ is far from reaching that point, and courts have roundly and reliably rejected attempts such as this one to short-circuit the process.

CEQ's dilemma is quite simple. It has not begun the process of attempting a valid change to the Reform Rule. It has not validly departed from any of the policy views and provisions embodied in that Rule. It needs to buy time; it wants to halt implementation of the Reform Rule without having to provide the needed rationale and without having to observe the required procedures. But this is not an acceptable method of proceeding.

(i) The Delay Rule Violates the Standard Governing Changes in Agency Position

The Delay Rule's issues are compounded by its failure to meaningfully engage with the Reform Rule's establishment of the 12-month deadline. The governing standard applying the general arbitrary-and-capricious standard to cases where an agency changes position is well established: "As the Supreme Court has explained, an agency must change its policy position but must 'display awareness that it *is* changing position' and 'show that there are good reasons for the new policy.'" *Am. Hosp. Ass'n v. Azar*, 983 F.3d 528, 539 (D.C. Cir. 2020) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)). CEQ violated this standard in the Delay Rule.

The Reform Rule explains that its selection of a 12-month deadline for agencies to propose their own NEPA reforms "strikes a balance between minimizing the disruption to ongoing environmental reviews while also requiring agencies to revise their procedures in a timely manner to ensure future reviews are consistent with the final rule." 86 Fed. Reg. at 43,340/2 (final rule). And in the Response to Comments accompanying the final Reform Rule, CEQ addressed comments that argued 12 months was too short, as well as comments that argued that 12 months was too long. Among other things, CEQ here noted that the time frame provided was "comparable to the amount of time the 1978 regulations allowed in 40 CFR 1507.3 for agencies to adopt procedures"; determined that "[t]he final [Reform] rule contains critical improvements to the NEPA process, and each agency should expeditiously review and propose revisions to their procedures to eliminate inconsistencies in the implementation of the final [Reform] rule"; and expressed the expectations "that agencies will allocate the necessary resources to propose agency NEPA procedures or revisions, as necessary, before the applicable deadline in the final rule" and "that agency NEPA procedures will be tailored to the final [Reform] rule and specific agency programs and circumstances, and focused on adding efficiencies." CEQ, Final [Reform] Rule Response to Comments (June 30, 2020), at 440-42. In sum, when it crafted the Reform Rule and its 12-month deadline, CEQ engaged in careful analysis of that deadline, balanced multiple considerations, and explained to the public its final choice and the reasons for that choice.

The Delay Rule *does not even acknowledge* this prior analysis, let alone acknowledge that CEQ is changing course from that analysis or provide the public with any explanation for its selection of a new, 36-month deadline. *Cf. Air Alliance Houston*, 906 F.3d at 1067 ("[N]othing in the Delay Rule explains [the agency's] departure from its stated reasoning in setting the original effective date and compliance dates."). This is particularly glaring here because CEQ's "interim final" Delay Rule expresses concern that the burden on agencies in developing proposed rules "may be substantial and require significant lead time," 86 Fed. Reg. 34,156/3—an issue, as set forth above, that was expressly considered by CEQ when it set the 12-month deadline in the first place. Separate and apart from the other defects discussed in these comments, the Delay Rule's violation of the *Fox* standard is by itself a fatal legal flaw.

The contrast between the Delay Rule's unreasoned extension of the deadline on the one hand, and the Reform Rule's reasoned establishment of the deadline on the other, makes one aspect of the Delay Rule all the more obvious: Nowhere does it explain *why* it selects a new deadline of 36 months (rather than the original 12) from the Reform Rule's effective date. Even its after-the-fact solicitation of comment gives the public no reasoning on which to comment. This is a hole at the center of the Delay Rule, but the delay's real purpose is patently obvious behind the Rule's pretext. The Biden Administration has no intention of implementing the Reform Rule, and so it has simply pushed the deadline out to a point far enough in the future that it thinks it will by then be done with whatever revisions or repeal efforts it may attempt to effect. This cynical end-run around a duly promulgated and binding regulation cannot stand.

ATTACHMENT B

CEQ, What They Are Saying – CEQ Issues Final Rule to Modernize its NEPA Regulations (July 2020)

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

What They Are Saying | CEQ Issues Final Rule to Modernize its NEPA Regulations

Last week, the Council on Environmental Quality (CEQ) announced its final rule to comprehensively update and modernize its National Environmental Policy Act (NEPA) regulations for the first time in over 40 years. The announcement comes after a multi-year review of its NEPA regulations, and after receiving over 1.1 million public comments from a broad range of stakeholders on a variety of issues relating to the regulations, as well as hosting public hearings and conducting other public outreach. For more details, please see a fact sheet on the final rule here.

Here's what elected officials and stakeholders are saying in response:

Members of Congress

Senate

Chairman John Barrasso (WY), Senate Committee on Environment and Public Works: "President Trump is cutting red tape to help get our economy back in the black," said Chairman Barrasso. "These updates will make the National Environmental Policy Act work better for the American people. Right now, important construction projects are being slowed down because of lengthy government permitting processes and lawsuits. The administration is making this process more predictable and efficient. We can protect the environment and move our economy forward at the same time. This rule gets that done."

Chairman Lisa Murkowski (AK), Senate Committee on Energy and Natural Resources: "For decades, projects in Alaska and throughout the country have languished as a result of a federal permitting process that has become unnecessarily burdensome due in large part to outdated NEPA regulations. As we work to recover from the COVID-19 pandemic and rebuild the nation's economy, it's important we bring our nation's 1970s-era permitting processes into the 21st century. The President and his advisers deserve credit for leading the charge to update and modernize federal NEPA regulations to responsibly streamline these processes so that critical infrastructure and other important projects can be built in a timely manner."

Senator Kevin Cramer (ND): "President Trump wants to rebuild America's infrastructure with fewer hurdles from Washington's overbearing bureaucracy. The National Environmental Policy Act regulations are outdated, burdensome, and unnecessarily complicated. It should not take longer to get the government's approval for a project than it would take to build it. I support the finalized rule and call on my colleagues to support passing a comprehensive infrastructure package, incorporating the highway reauthorization and water infrastructure bills we unanimously passed through the Environment and Public Works committee."

Senator John Hoeven (ND): "Infrastructure, whether it's for mitigating natural disasters, producing energy or transporting people and goods, serves as the backbone of our economy,"

said Senator Hoeven. "As we've seen with Dakota Access and other projects bogged down through litigation, the federal NEPA review process has often resulted in inflated costs and significant delays for a wide range of vital projects across our nation. This final rule is a welcome effort that builds on our record of providing regulatory certainty for future projects and will help taxpayer dollars go further as we work to build and repair the nation's infrastructure."

Senator Mike Lee (UT): "I commend @realDonaldTrump for making these long overdue common-sense reforms, but Congress needs to enact further reforms to this outdated process. I will be introducing legislation to further reform NEPA soon."

Senator Dan Sullivan (AK): "Before the ink is even dry on the President's final rule reforming federal environmental permitting processes, many national media outlets are casting the move as a 'weakening' of environmental protections," said Senator Sullivan. "What is rarely mentioned is the fact that, as they currently stand, these regulations kill jobs. It takes an average of four-and-a-half to six years just to complete an Environmental Impact Statement under NEPA and nine to nineteen years to fully permit a highway in America. Democrats and Republicans agree our infrastructure is in desperate need of revitalization, but the existing NEPA process all but ensures it will be years before we see the jobs and improvements we need—even if we passed a major infrastructure package tomorrow. President Trump and his administration are making the right call to reform our NEPA regulations so that we can protect the environment we all cherish and also bring our highways, airports, harbors and utilities into the 21st century. I also thank the President and his team for incorporating a significant portion of my *Rebuild America Now Act*, which I'm still working to get through the Senate, to codify realistic NEPA deadlines, simplify NEPA documents, and further streamline the NEPA process. These kinds of reforms are supported by hard-working Alaskans who build big things—pipelines, bridges and roads—and I'm proud to stand with them."

House of Representatives

House Republican Leader Kevin McCarthy (CA-23): "Today marks the beginning of a new chapter in infrastructure development in the United States, illustrating the importance of pursuing commonsense policies and ending 'paralysis-by-analysis.' Projects across the United States and in my congressional district will benefit from reduced bureaucratic overreach, while the underlying intent of NEPA, to minimize or eliminate impacts to the environment, will be preserved. I commend President Trump and Council on Environmental Quality Chairman Mary Neumayr for taking this important action today. The updated NEPA guidelines will help our nation remain a global leader in reducing greenhouse emissions while still empowering our country to enhance our infrastructure."

House Republican Whip Steve Scalise (LA-01): "Today's action by the Trump Administration to modernize the NEPA regulations will cut down on outdated, bureaucratic red-tape obstructing critical national and local infrastructure projects. Energy infrastructure, coastal restoration, and flood protection projects in Louisiana and across the country have long been delayed by a NEPA process that has become overly complex and burdensome. Instead of years-long reviews that produce 600+ page documents, these updated regulations will be more effective and will lead to simpler environmental reviews and more shovels in the ground on projects that will benefit

Americans' everyday lives. I applaud President Trump for his efforts to streamline and modernize NEPA regulations to promote economic growth and eliminate the unnecessary red tape that slows down critical infrastructure projects, all while continuing to protect our environment."

House Republican Conference Chair Liz Cheney (WY-At Large): "I applaud the Trump administration's commitment to streamlining burdensome NEPA requirements, which have obstructed energy development and critical infrastructure projects in Wyoming. For too long, NEPA's out-of-date regulations have been abused by far-left environmental extremists to silence the voice of local stakeholders in our state, delaying vital improvements to Wyoming's roads, bridges, and waterways. President Trump is continuing to fulfill his promise to get the government off the backs of hardworking Americans by decreasing overreach and red tape."

Ranking Member Rob Bishop (UT-01), House Committee on Natural Resources: "Every administration for the past half a century has tried to untangle the mess Congress created by writing NEPA in the way it did. The House and Senate was smoking something when they enacted the obscure and flowery text of that 1965 law, and since then the courts, private business, and now special interest groups have spent unfathomable resources defining it for them. That's not the way our form of government is supposed to work. Enacted with noble intent to expand public input and enhance environmentally conscious decisions, NEPA has morphed into a tool for excessive litigation to slow or block economic activity, including crucial projects to support clean water, affordable energy, and essential infrastructure. Today, the Administration made good on another promise to the American people. With this rule, we will have a modern environmental review process and greater regulatory certainty. Work in Congress remains to build upon and reinforce the critical work enshrined in this rule."

Ranking Member Sam Graves (MO-06), House Committee on Transportation and Infrastructure: "The slow, inefficient, and costly federal review and permitting processes continue to be an impediment to the improvement of America's infrastructure. I commend the Administration for its efforts to modernize the decades-old NEPA process. Committee Republicans agree with this necessary step, which is why we included similar streamlining provisions in our surface transportation reauthorization bill, *the STARTER Act*. Updating NEPA will save taxpayers' money while maintaining necessary protections for the environment, public safety, and human health."

Ranking Member Greg Walden (OR-2), House Committee on Energy and Commerce; Ranking Member Fred Upton (MI-06), Subcommittee on Energy; Ranking Member John Shimkus (IL-15), Subcommittee on Environment and Climate Change; and Ranking Member Bob Latta (OH-05), Subcommittee on Communications and Technology: "While we must ensure strong environmental standards and protections, it is long past time to update NEPA to improve its processes. This 50-year-old law to facilitate federal decisions has morphed into a costly, burdensome, bureaucratic review process, producing hundreds of pages of reports and years of unnecessary delays and uncertainty for vital infrastructure projects around the nation. These outdated and inefficient regulations unnecessarily increase costs of public and private infrastructure projects, and result in millions of dollars in lawsuits. Today's final rule provides much-needed updates that will restore NEPA to its original purpose of promoting smart

decision making, maintaining environmental quality, and allowing for innovative, resilient infrastructure. We will continue to work with CEQ as this rule takes effect."

Ranking Member Greg Walden (OR-2), House Energy and Commerce Committee: "Rural Oregonians know too well the burdens of our dated, slow and tedious NEPA regulations. They've watched for years as special interest groups have hijacked the process to drag out needed forest and range management projects that would improve the health of our public lands and reduce the threat of wildfire on our communities. A lot has changed in the last 40 years and a fresh look at these regulations is long overdue. President Trump's actions to streamline this process will help ensure that we can better manage our forests, protect our communities and improve our nation's transportation and energy infrastructure into the future."

Congressman Ralph Abraham, M.D. (LA-05): "If our country is serious about cutting red tape, fostering growth in the private sector, and paving the way for a major infrastructure renewal, streamlining the NEPA review process is a critical step. This final rule is proof that we can protect our environment without sacrificing growth and opportunity. I applaud President Trump for satisfying yet another promise in his pro-growth agenda that will benefit the American people in many ways."

Congressman Larry Bucshon, M.D. (IN-08): "The current National Environmental Policy Act (NEPA) process drowns much-needed infrastructure projects in unnecessary and outdated, bureaucratic red tape that costs local communities and businesses millions of dollars on lawyers and consultants. I am pleased to see the Trump Administration take much needed action in reforming and modernizing NEPA. These finalized changes will help streamline the federal permitting process and eliminate burdensome Washington red tape by improving coordination, setting time limits, and reducing frivolous litigation. The Trump Administration's changes to NEPA put in place badly-needed commonsense reforms that ensure that the infrastructure projects crucial to growing our economy are completed in a timely and efficient manner while simultaneously maintaining high environmental protection standards."

Congressman Michael C. Burgess, M.D. (TX-26): "The Trump Administration's efforts in modernizing the NEPA carefully weighs the needs of our 21st century economy with the responsibility of being good shepherds of the nation's environment and resources. By making these important changes, such as establishing reasonable time limits, streamlining inter-agency coordination, and reducing unnecessary paperwork, the Trump administration is removing federal barriers to developing a cleaner, more productive infrastructure system. The burdensome permitting procedures of NEPA have blocked the development of important systems such as pipelines, wind farms, interstate highways, and transmission lines. America can both manage its environmental impacts and address the needs of our nation for today and tomorrow."

Congressman Ken Calvert (CA-42): "Building the infrastructure our country desperately needs and protecting our environment are not mutually exclusive goals. The updates being made to NEPA today will enable communities across the country to build the infrastructure necessary to support their economic growth in a timely manner that maintains balanced environmental protections."

Congressman James Comer (KY-01): "President Trump's bold action is a necessary step toward ensuring that costly and duplicate regulations do not slow down much needed infrastructure projects in America," said Congressman Comer. "Safely streamlining the environmental regulatory process will help expedite important projects, put Americans to work and unleash economic growth here at home."

Congressman Paul Cook (CA-08): "This important rule change will streamline the environmental review and permitting process for critical infrastructure projects. The current process is fraught with bureaucratic red tape and onerous requirements, often needlessly delaying projects for years. I applaud the administration and the CEQ for implementing the new rule."

Congressman Russ Fulcher (ID-01): "These much needed updates to the NEPA process will be a relief for Idaho and the many projects that have been blocked or delayed by unnecessary litigation and red tape. I applaud the Trump Administration for making these improvements to NEPA, and for prioritizing the need to reform bureaucratic, costly regulations that are holding our country back."

Congressman Paul Gosar (AZ-04), Chairman, Congressional Western Caucus: "Today's announcement by the President that we are updating NEPA is welcome news for everyone in America who likes to see America build things and grow. For too long, NEPA has grown stale, wrapped in judicial decisions, lengthy paperwork requirements and more. What was originally just a checklist for project take off has become a process and court mandated demand for every possible consideration, theory and potential impact for entire industries wrapped onto one project. From offshore wind in the Atlantic to solar transmission in the southwest, and pipelines nationwide, we have seen the burden these impacts take in time, and project delays cost everyone: workers, consumers, and taxpayers. This new rule will make NEPA modern, it will speed planning, increase citizen engagement, and allow America to build great things once again."

Congressman Dusty Johnson (SD-At Large): "The United States should always strive to be ahead of the curve for infrastructure and advancement while balancing environmental concerns. The modernization of the NEPA process is long overdue and will ensure critically important infrastructure projects are completed without bureaucratic delay."

Congressman Mike Johnson (LA-04): "For years, Louisianians have watched as the radical Left has twisted NEPA to kill critical infrastructure projects designed to improve quality of life and foster economic growth. In my home district, a desperately needed project that would add just three miles of highway to connect Interstate 49 through Shreveport has been bogged down in the environmental review process for more than seven years with no end in sight. President Trump understands better than anyone that modernizing NEPA is key to getting Americans back to work and rebuilding our nation's crumbling infrastructure. By cutting red tape and pushing commonsense reform across the federal government, the Trump administration and Republican-led Congress built the strongest, most prosperous economy in the history of our country. With bold, decisive action like this updated rule, I have every confidence that President Trump can help America do it again."

Congressman Doug LaMalfa (CA-01), Vice-Chairman for Agriculture and Chief Business Officer, Congressional Western Caucus: "NEPA's review processes are severely outdated, and as a result, it often takes years for important infrastructure projects to be approved. Too often, the unnecessary bureaucracy gets in the way of building water storage, roads, bridges, and other projects in a timely manner. Today's final rule modernizes the environmental review process, and in turn, will speed up infrastructure projects that are much-needed across America. I'm glad the Trump Administration has finally cut the red tape around updating our infrastructure by streamlining the NEPA process."

Congressman Doug Lamborn (CO-05), Vice-Chairman for Defense and Veterans Affairs, Congressional Western Caucus: "President Trump has consistently fought to overhaul duplicative and burdensome regulations. These updated NEPA regulations will streamline infrastructure development, reduce project costs, and provide much needed certainly to the permitting process. For far too long environmental extremists have weaponized the permitting process to block or needlessly delay critical infrastructure projects. These new reforms will drastically improve the decision making processes while also maintaining appropriate environmental protections and opportunities for public input. I am grateful that the President continues to prioritize the revitalization of America."

Congressman Frank Lucas (OK-3): "Enacted to evaluate the environmental impacts associated with federal infrastructure and economic development projects, today's NEPA permitting process has become overly complicated and burdensome. In districts throughout the country, including Oklahoma's Third Congressional District, our communities rely on the investments of infrastructure and economic development projects, like building better roads and bridges or laying broadband. Yet sadly, many of these projects are often delayed or restricted hindering the positive impact these critical projects will have. Today's NEPA reform is a return to a more streamlined process, cutting bureaucratic red tape and allowing for infrastructure and economic development projects to come online faster, all while ensuring we continue to protect and maintain the highest standards of environmental stewardship. I applaud the Trump Administration and the CEQ for their efforts in making the NEPA work as efficiently as possible for my fellow Oklahomans, and for continuing to bring our regulations into the 21st century."

Congressman Roger Marshall, M.D. (KS-01): "I applaud President's Trump's actions in updating and streamlining NEPA regulations, paving the way for more timely, community-focused investments in critical infrastructure projects. Too often, outdated rules and bureaucratic red tape add unnecessary hurdles to these much-needed projects, creating a costly and time-consuming process for communities. These commonsense reforms will encourage economic growth while continuing to protect our environment for future generations."

Congressman Alex X. Mooney (WV-02): "For far too long NEPA regulations have been outdated and excessive. These overly burdensome regulations delay construction projects that create jobs and improve our infrastructure. Thanks to the leadership of President Trump, this new, effective system for environment reviews will help grow our economy and modernize our roads, bridges and highways."

Congressman Markwayne Mullin (OK-02): "NEPA regulations affect a wide range of projects from construction of roads to land and forest management, but the current regulations have become overbearing and difficult for people to navigate. This new rule will allow us to move faster on infrastructure projects while still ensuring we keep our environment safe and clean. Thank you, President Trump for cutting the red tape and removing job-killing regulations."

Congressman Dan Newhouse (WA-04), Vice-Chairman for Departments of Interior and Energy, Congressional Western Caucus: "Overregulation and unnecessary permitting delays have had negative impacts on our communities for decades, especially in rural areas. NEPA in its current form exemplifies 'bureaucratic red tape' – with evaluations taking up to 6 years to complete. Our constituents cannot afford these delays when trying to renew, maintain, or develop critical infrastructure projects across the country. Earlier this year, Republican Whip Scalise and I led 130 Members of Congress in a letter to support CEQ's efforts to modernize NEPA, and I am glad to see the Administration following through on this regulatory relief. This rule will finally allow for a streamlined permitting approach, encourage environmental stewardship, and incentivize investment in our rural communities across the West and beyond."

Congressman Pete Olson (TX-22): "While we need a proper review process for infrastructure projects, the NEPA process has stymied needed development to strengthen our communities," Congressman Olson said. "This update was sorely needed to streamline the environmental review process and move needed projects forward. I applaud the president for this rule change that will ensure that our critical infrastructure projects are not held up by litigation and the heavy hand of Washington."

Congressman Pete Stauber (MN-08): "Reform of a broken and cumbersome NEPA process is vital for northern Minnesota. We need mining, road and bridge construction, harbor maintenance, renewable energy development, pipeline building, and electricity transmission if we are to compete with the rest of the world while providing high-wage jobs. Unfortunately, any progress on these projects has been hijacked time and again by well-funded activist groups working under the guise of conservation. Therefore, I applaud President Trump, the Council on Environmental Quality, and the rest of the Administration for rightfully moving forward with these commonsense reforms. I look forward to working with the Administration and putting northern Minnesota back to work."

Congressman Chris Stewart (UT-02): "NEPA was intended to lead to more informed decision making for federal projects, but it has become an expensive hinderance to getting infrastructure in place. I am happy to see changes that increase efficiency and effectiveness of NEPA for infrastructure projects."

Congressman Bruce Westerman (AR-04), Vice-Chairman for Infrastructure and Forestry, Congressional Western Caucus: "NEPA is based on a good idea – oversight on government projects – but over the years it has morphed into a weapon for litigious environmental groups. Now, NEPA has become the most litigated environmental law in the country, delaying critical construction and infrastructure projects across America. This is untenable. The administration's NEPA rule changes would set time limits for environmental reviews, clarify where NEPA applies, reduce frivolous litigation, cut back on unnecessary paperwork and more, maintaining

the parts of NEPA that are effective and eliminating those that aren't. I applaud President Trump's commitment to reducing unnecessary regulatory burdens."

Congressman Don Young (AK-At Large), Vice-Chairman for Indian Affairs and Fisheries, Congressional Western Caucus: "When Congress originally drafted and passed NEPA, it was to be a simple, streamlined process. However, it has grown into a bureaucratic and lawsuit-prone monstrosity that has far exceeded its original congressional intent. The NEPA process is long, arduous, and frequently takes many years to complete. The Golden Gate Bridge and the Hoover Dam were finished in under a year; had NEPA existed then, this may not have been the case. There is no reason that these or other federal projects should be delayed by federal red tape. I applaud President Trump for recognizing the great regulatory burden of NEPA and taking action to reform the process."

Governors and Other State Government Officials

Alaska

Governor Mike Dunleavy (AK): "Over the past 40 years, these regulations have strangled the American dream for so many Alaskans," said Governor Mike Dunleavy. "These long-awaited reforms are a ray of hope for those who have suffered the impacts of federal overreach in my home state. Lifting the regulatory burden will spur responsible natural resource development in Alaska, creating jobs and economic opportunity while still protecting the environment."

Jason Brune, Commissioner, Alaska Department of Environmental Conservation: "CEQ's revised NEPA regulations acknowledge that responsible development and timely permitting can go hand in hand. Changes like these will improve predictability for the investment community and will hopefully slow the exodus of critical natural resource development to other nations where environmental oversight is often an afterthought. Kudos to CEQ and President Trump."

Arkansas

Governor Asa Hutchinson (AR): "I was glad to see today's long-overdue modernization of NEPA. These changes will cut unnecessary red-tape and jumpstart stalled infrastructure projects in Arkansas and across the country, while ensuring that we remain good stewards of the environment."

Arizona

Buster Johnson, Supervisor, Mohave County, District 3: "This is a much-needed modernization of the NEPA process that considers both the environmental costs as well as the economic benefits of projects being developed on federal lands. These updated NEPA rules are concerns Mohave County has been advocating for a long time. By proposing a time limits of two years for completion of an EIS and one year for completion of an environmental assessments (EAs), this new process will relieve unnecessary burdens and extravagant costs that project developers, government officials, and the public were all facing in the past. Limits like this have

been a long time coming, and I am extremely glad to see them included in this new rule. I want to applaud the Council on Environmental Quality for all their hard work on these much-needed updates."

Misael Cabrera, P.E , Director, Arizona Department of Environmental Quality:
"This Final Rule adds much needed clarity to both substantive and administrative aspects of NEPA. In addition, we appreciate the recognition that environmental impacts felt by Arizona's 22 federally recognized tribes is not limited to lands within reservation boundaries."

Colorado

Ray Beck, Chairman, Associated Governments of Northwest Colorado: "NEPA has a history of being manipulated by special interest groups who effectively prevent federal land management from being implemented. The revised NEPA rules are a positive step to meaningfully involve the public and local governments in effective, responsible and positive land management decisions."

Libby Szabo, County Commissioner, Jefferson County: "The EPA got a win, win for all sides with updating the NEPA process. Not only will it make it more efficient to the folks who are building the country's infrastructure and give more certainty to the process. It will also fulfill the EPA's main mission to protect our environment and the people living in our communities."

Georgia

Governor Brian Kemp (GA): "By cutting outdated regulations, this regulatory reform will reduce burdensome bureaucracy without compromising environmental protection. I want to thank President Trump and the Council on Environmental Quality for their strong leadership on this issue. Working together, we will continue to cut red tape to support our job creators and create economic opportunity for the American people."

Chris Carr, Attorney General (GA): "This January, the Trump administration proposed the first comprehensive reforms to NEPA since 1978. The goal is a more efficient, effective and timely federal review process that addresses 50 years of federal mission creep and duplicative regulatory authority among a growing number of agencies…Overlapping jurisdictions complicate the federal review process and bury local leaders under the weight of red tape, agency redundancies and conflicting regulations. The proposed reforms to NEPA establish clearer lines of authority and consolidate the decision-making process while furthering our national commitment to environmental protection… The Trump administration's proposed improvements to the NEPA process are long overdue. They deserve our enthusiastic support to ensure Georgia's economic competitiveness, public safety and efficient environmental protection."

Brandon Beach, State Senator, District 21: "Proud to join @realDonaldTrump today as he visits ATL to announce his move expediting infrastructure projects GA desperately needs. He's following through on his promises and dismantling the bureaucratic mess DC has created over the last few decades. Thank you Mr. President!"

Tyler Harper, State Senator, District 7: "Great to be with President Donald Trump as he visited Georgia today to announce their continued efforts to streamline the federal regulatory process. This announcement goes a long way in expediting infrastructure projects, reducing project costs, and shortening the timeframe for approval from up to 20 or more years to just 2 years. President Trump and his administration continue to make good on their promises! This announcement is huge for our state - thank you Mr. President!"

David Ralston, Speaker of Georgia House of Representatives, State Representative, District 7: "I appreciate President Trump returning to our state to discuss an issue Georgia has been a leader on for many years ― infrastructure. From deepening our ports to expanding capacity on our interstates, Georgia has invested resources in keeping people moving and our economy growing. I thank the President for his commitment to supporting our continued growth and prosperity by cutting needless red tape which slows progress and wastes taxpayer dollars."

Vernon Jones, State Representative, District 91: "@POTUS visited the Peach State 2day to boost transportation, job creation, and economic development projects. He's cut highway regulations from 10 years to 2 for approval. It's clear to us, @realDonaldTrump has Georgia On His Mind!"

Jan Jones, State Representative, District 47: "Grateful for the partnership with the @WhiteHouse and @POTUS to continue regulatory reform and increase investment in GA's infrastructure! This will [be] good for our interstates, like GA 400!"

Liz Hausmann, Commissioner, Fulton County, District 1: "At #UPS in #Atlanta to see @realDonaldTrump make a major transportation announcement that will take years off construction projects. Good for Ga. Good for the #USA…Thank you, Mr. President!"

Idaho

Governor Brad Little (ID): "I applaud President Trump's efforts to modernize the National Environmental Policy Act. The proposed updates will reduce barriers to prosperity, improve public participation, and create certainty while upholding essential environmental safeguards. The much-needed updates will allow Idaho to move at the speed of business, creating jobs and improving our infrastructure and natural resources – something that's more important now than ever before."

Iowa

Governor Kim Reynolds (IA): "President Trump has made it a priority to reduce excessive and burdensome regulations that restrict innovation and slow economic growth. For decades, NEPA strangled our economy with excessive paperwork, litigation, and delays. Modernizing these regulations will balance environmental protections with common sense practices benefiting Iowa taxpayers and the entire economy."

John H. Wills, State Representative, House District 1: "The National Environmental Policy Act affects our everyday lives from the construction of roads, bridges, highways, and airports to

conventional and renewable energy projects, water infrastructure, and even loans for small businesses and family farms. The final rule ensures that Federal agencies consider all significant effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action. This is a reasonable approach while at the same time protecting our environment and fragile systems."

Minnesota

Randy Maluchnik, Commissioner, Carver County, District 3: "As major owners and operators of our local transportation and infrastructure systems, Carver County appreciates the Council on Environmental Quality's efforts to streamline the federal permitting process and eliminate unnecessary delays for county road and bridge projects. Safeguarding the health and vibrance of our local communities should be balanced with commonsense permitting reforms that reduce red tape and facilitate the delivery of projects that enhance safety, connectedness and our local and regional economies."

Mississippi

Governor Tate Reeves (MS): "President Trump and his Administration continue to make great strides in ensuring and protecting the future of our nation's natural beauty and resources. With the White House's Council on Environmental Quality updating the National Environmental Policy Act and modernizing burdensome regulations, it will not only benefit our environment but our economy as well. Which means we all win."

Mississippi Department of Agriculture & Commerce: "Today President Donald J. Trump's Council on Environmental Quality released modernized National Environmental Policy Act (NEPA) regulations. Mississippi Department of Agriculture and Commerce Commissioner Andy Gipson applauded this move saying, "This will reduce burdens on agricultural businesses that provide food, fiber and fuel for Mississippi and the country. Farmers are the original conservationists because they depend on our natural resources. Modernizing NEPA will keep our environment safe while decreasing costs to business, commerce and consumers."

Montana

Steve Gunderson, State Representative, House District 1: "We, in Western Montana, are drowning in a sea of red tape. An outdated NEPA, badly needing updating, does not meet the current needs of prudent, timely and trusted environmental review. NEPA is weaponized to add decades to environmental review to ultimately be litigated by one organization just to be re-litigated by another organization waiting in the wings. We need one-time, non-frivolous litigation with a quick judgement that the project either passes environmental review or fails. Once a review has been made, the project should be shielded from further litigation. I believe the proposed NEPA reform answers these needs."

Becky Beard, State Representative, House District 80: "The Trump Administration's 'One Federal Decision' policy updates and streamlines the NEPA process. These efforts are to be applauded. Not only will the public participation process be concluded in the early phases, but the overall environmental review process will be accelerated while maintaining emphasis on the

management of our Federal lands and waters, and to our overall environment. Delays and project cost overruns will be minimized, and many of the unnecessary litigation efforts can be reduced. The allowance for other agencies to utilize other CatEx determinations will also promote efficiencies in the overall process."

Nebraska

Governor Pete Ricketts (NE): "Thank you to President Trump for modernizing the 50-year old National Environmental Policy Act (NEPA) regulations to facilitate more efficient, effective, and timely NEPA reviews by simplifying and clarifying regulatory requirements. The new rule will significantly reduce the amount of time allowed to complete NEPA reviews and save Nebraska taxpayers millions of dollars."

Jim Macy, Director, Nebraska Department of Environment and Energy: "Nebraska has a long history of local and state agencies effectively and efficiently managing our natural resources together. The final NEPA rule allows for better coordination between federal agencies and stakeholders, including states, while reducing duplications of effort and resulting in better informed and timelier NEPA reviews."

Nevada

Leo Blundo, Commissioner, Nye County, District 4: "We all agree that environmental considerations are important, we want to leave our kids a better world. However, NEPA has been used to delay or bureaucratically kill almost every project proposed if any federal decision is involved. In an area like Nye County where 98 percent of the land is under federal control every project we need requires a federal decision and must follow NEPA. The challenge is NEPA has become unworkable. The federal bureaucracy has evolved to avoid litigation so every NEPA study has become a never ending money pit which bogs down almost every project. So any changes that will reduce the time and money spent on NEPA while still providing for informed decisions is a win-win for everyone, government, businesses, and the public we serve. We are hopeful that these changes will provide for jobs and economic development in rural areas like Nye County while keeping public lands open for everyone's enjoyment."

New Mexico

James Townsend, State Representative, District 54: "I am pleased to support this worthwhile effort that not only continues to protect and preserve our environment but also enables and allows job creation and future economic prosperity. Thank you Mr. President."

William E. Cavin, Chairman, Chaves County Commission: "The NEPA environmental review process is incredibly burdensome to local governments as well as business. The current process takes years to complete. The CEQ Final Rule sets common sense time limits and clarifies when NEPA applies. I applaud the Administration for undertaking these much needed updates to NEPA."

North Dakota

Governor Doug Burgum (ND): "Modernizing our roads, pipelines, flood protection and other critical infrastructure is crucial to the safety and economic success of North Dakotans and all Americans, and such projects deserve a timely, efficient and effective environmental review. The 40-year-old NEPA process has become overly complex and time-consuming, resulting in unnecessary delays, litigation and inflated costs that ultimately fall on taxpayers. We appreciate the Trump administration and CEQ for finalizing these streamlined, common-sense rules, which will return the process to the original spirit of NEPA by ensuring timely reviews, retaining the focus on environmental stewardship and expanding public participation."

Brent Sanford, Lieutenant Governor (ND): "We appreciate the White House Council on Environmental Quality for finalizing this streamlined, common-sense NEPA process, ensuring timely reviews, retaining the original spirit of environmental stewardship and expanding public participation."

Oklahoma

Governor Kevin Stitt (OK): "Today's update to the regulations for implementation of the National Environmental Policy Act are a welcomed improvement. For far too long, activists have weaponized NEPA as a way to delay and deny important federal projects. This Rule helps pave the way for projects to have the proper environmental reviews, but get completed in a reasonable amount of time."

Ken Wagner, Secretary, Oklahoma Department of Energy and Environment: "Today's NEPA reform is a welcomed relief. This important reform will make sure that future NEPA reviews are evidence based and focused on the relevant environmental issues, and the real impacts of these important projects. We are delighted that this rule puts these NEPA reviews back in line with what Congress intended."

Pennsylvania

Christian Y. Leinbach, Chairman, Berks County Commissioners: "The NEPA process has been cumbersome, unpredictable and costly for Berks County and often has little or nothing to do with protecting the environment. As a County Commissioner I welcome these common sense reforms by the White House's Council on Environmental Quality as well as the leadership of the Trump administration in leading meaningful reform."

South Dakota

Governor Kristi Noem (SD): "Modernizing and revamping the NEPA regulations are significant and long-overdue. Among a host of others, one area we often see these burdensome requirements slowing down progress is around infrastructure projects like highways and bridges. As Governor, I am committed to protecting our people and our state from federal government intrusion. I'm so thankful for President Trump's leadership on these very necessary reforms."

Tennessee

Governor Bill Lee (TN): "The American people deserve an effective and efficient federal government, and I'm very pleased to see President Trump and his administration cutting bureaucratic red tape so that federal projects can be approved and completed in a more timely manner."

Texas

Governor Greg Abbott (TX): "I applaud the CEQ's efforts to streamline the NEPA review process, reduce unnecessary and redundant regulatory burdens, and clarify longstanding CEQ regulations. Restoring efficiency in the NEPA review process will enhance public safety, improve environmental outcomes, and deliver cost benefits to consumers. I strongly support programmatic NEPA reform at the CEQ and individual agency levels, and look forward to its implementation."

Ken Paxton, Attorney General (TX): "Proud to support @realDonaldTrump for his strong stance against overreaching job-killing government regulations."

Utah

Governor Gary Herbert (UT): "I appreciate the Trump Administration's work to modernize NEPA, which was long overdue. Environmental Protection is crucial, and a simpler, faster, and more certain process is a win for everyone. Taxpayers and the environment will both benefit from these changes."

Leland F. Pollock, Chairman, Garfield County Commission: "Anyone that enjoys the blessings of Public Lands owes this President a huge debt of gratitude. Multiple use of our Public Lands is what they were created for. Multiple use means all Americans should be able to use them. Single use special interest groups have been working for many years to lock everything up. The NEPA revisions will help all Americans have access to our Nations greatest assets, Public Lands. Thank you President Donald Trump."

Tammy Pearson, Commissioner, Beaver County: "We are hopeful that the new CEQ guidelines on NEPA will encourage a more timely process that considers local input, impacts and preferred alternatives. As locally elected County Commissioners, we especially appreciate this Administration's attention to negative impacts to local projects caused by a burdensome NEPA document."

West Virginia

Gary Howell, Delegate, District 56: "I want to thank President Trump for moving forward with policies to reduce the regulatory chains holding back American job creation. The reforms of NEPA will pay dividends into the future by allowing Americans, and specifically West Virginian's, to have growing job opportunities."

Wyoming

Governor Mark Gordon (WY): "An update to the NEPA regulations is long overdue. There is little doubt that the implementation of NEPA has evolved from scientific consideration of the environmental impacts of proposed major Federal actions to a frequently burdensome tactic used to obstruct development. The Administration's effort to revise the regulations to streamline the overall process is most welcome."

Dan Laursen, State Representative, District 25: "Finally, after 40 some years, we have a President who took on the task of updating the NEPA regulations with vengeance and the administration has came up with new and improved regulations. NEPA's original intent will still be met, where government agency decision makers will still need to consider alternatives to major actions, the public will be invited to participate before the action is taken and any consequences that may result in the action must be considered, all in a set amount of time. Not 4.5 years on average that it takes now but limited to 2 years. And a reduction in frivolous litigation is the most important part. Thank you President Trump."

Robert Short, **Chairman, Converse County Commissioners:** "The Trump administration is clearing the clutter associated with years of apathy in our federal leadership. NEPA has been a shining example of bureaucratic swamp waters that seek to justify existence through the unnecessary burdening of our innovative people when they seek to provide economic growth for our country utilizing our lands and resources. As a county commissioner and small business owner/operator, I have experienced firsthand the effects of this job-killing tactic. President Trump has shown a bright light on the darkness that has sought to stymie our country and has taken powerful steps to clear the minefields which hamper our ability to be energy independent and economically stable. Kudos to our President for his willingness to drain the swamp and help our nation grow. NEPA will no longer be a tool used to kill opportunity and stifle our growth. Thank you President Trump!"

Joel Bousman, Commissioner, Sublette County: "In Sublette County, Wyoming, it took 15 years to complete the NEPA required to simply renew livestock grazing in the Upper Green River Valley in western Wyoming. The Final Rule will appropriately address the time required for a decision. Sublette County, Wyoming is in strong support of CEQ's Final Rule updating its NEPA Regulations."

Associations, Labor Unions, and Other Stakeholders

Agribusiness & Water Council of Arizona, **Chris Udall, Executive Director:** "It's the 21st Century! It is far past time that we update and streamline this 40-year-old rule with a new, more efficient and effective system that works for the regulated community. New and improved is what we're after and we thank the Trump Administration for listening to our desires for a better process. We can have a swifter process while also protecting the environment. We can have it both ways!"

Agricultural Retailers Association, Daren Coppock, President and CEO: "The final rule will speed up the approval process for much-needed infrastructure projects, which will especially

benefit the rural communities in which ag retailers and their customers live and work. The rule does not compromise environmental reviews or public input, in fact the rule will enhance the public's involvement through better coordination of hearings and more concise, accessible documents for review."

American Conservative Union, Matt Schlapp, Chairman: "President Trump wants to end the decades-old approach of money intended for infrastructure projects being spent on countless environmental studies, designed simply to delay those projects from ever moving forward. The Council on Environmental Quality finalization of proposed rules on modernizing the National Environmental Policy Act regulations will end this practice of obstruction through regulation. These new rules will hold Federal agencies accountable to use the money for what it is intended to do, and that's improving infrastructure for communities in need. Left-wing bureaucrats have spent year after year spending money on endless studies that prevent real improvements to America's infrastructure. These new rules will put a stop to those tactics. ACU strongly supports this modernization initiative."

American Energy Alliance, **Thomas Pyle, President:** "The American Energy Alliance applauds the administration's modernization of the National Environmental Policy Act. NEPA is one of the most inefficient, growth-slowing, infrastructure-stopping laws we have in the U.S., and was in desperate in need of this modernization. Americans need (and deserve) updated infrastructure to get them safely where they need to go and to ensure affordable, reliable energy arrives to their cities, communities, businesses, and homes. Radical environmental groups have twisted the intent behind NEPA and leveraged the legal system to their advantage in a coordinated effort to slow and stop progress. This long overdue modernization will get American infrastructure projects out of the courtroom and onto the construction site."

American Exploration & Mining Association, Mark Compton, Executive Director: "Simply put, NEPA is broken. While a NEPA analysis has become 'standard operating procedure' for our members, it also has become increasingly more cumbersome, time consuming and expensive. NEPA is no longer the planning and decision-making tool it was designed to be. Instead, it has become *the* tool used by obstructionist groups who oppose responsible and lawful mineral development on federal public lands. Reforming the NEPA process and creating a more efficient permitting system are critical to improving the competitiveness of the domestic mining industry, job creation, and decreasing our reliance on foreign sources of the minerals needed for our way of life and virtually every sector of our economy including infrastructure, healthcare, renewable energy, and all types of manufacturing. The final rule announced today is a positive step toward a more effective permitting system while maintaining important environmental safeguards and ensuring meaningful public involvement and participation in the NEPA process."

American Exploration & Production Council, Anne Bradbury, CEO: "Modernizing and clarifying NEPA could not come at a better time for our country, as we are recovering from COVID-19. NEPA permitting reforms will allow the U.S. to safely explore and produce energy, provide job opportunities to American communities, build the infrastructure needed to meet growing energy demands and expand our national economy, especially in those communities that do not have adequate access to oil and natural gas. American energy companies adhere to the most stringent regulations in the world, and often go above and beyond legal and regulatory

requirements to reduce our industry's environmental footprint. The Administration's modernization of NEPA will allow for continued energy production and exploration in an environmentally protective way, which will help attract investment and get these projects through the permitting process – things that are vital to our ability to help spur job creation and economic growth. CEQ's modernization returns NEPA back to its initial purpose and the American people."

American Farm Bureau Federation, Scott VanderWal, Vice President: "Farmers and ranchers rely on the land, some directly on federal forests and rangelands, so keeping them healthy and productive is critical to us. But current NEPA regulations have become an obstacle instead of an instrument for responsible management. The government has reached a point of analysis paralysis, which serves no one well, least of all the environment. Updating these 40-year-old regulations is smart government."

American Fuel & Petrochemical Manufacturers, Chet Thompson, President and CEO: "We believe this new rule provides a needed update of the processes and procedures that govern the permitting of our nation's most vital infrastructure projects, allowing them to move forward without undue delay while ensuring our shared goal of proper environmental stewardship. It also creates greater predictability around the federal permitting process, providing businesses the necessary confidence to invest in important projects that will create thousands of jobs and enliven our economy."

American Gas Association, Karen Harbert, President and CEO: "More than 179 million Americans use natural gas in their homes and one new customer signs up every minute which requires expanding and maintaining our world-class energy infrastructure. America's natural gas utilities are making significant investments in modernizing our vast pipeline network while also drastically reducing the emissions profile for each customer through energy efficiency gains and advanced technologies. A reformed permitting process will enable natural gas utilities to continue to deliver affordable and clean natural gas which will be essential for our nation's economic revival and achieving our shared environmental goals."

American Highway Users Alliance, Laura Perrotta, President and CEO: "Today's final rule modernizes our 50-year old NEPA law and implements commonsense improvements to NEPA's critical review process. Americans can now unlock essential infrastructure investment for vital projects across the nation. The final rule balances modernizing the NEPA process and protecting the environment. In recent years, NEPA's complex administrative procedures have ensnared a wide range of economic sectors from transportation to construction to agriculture. Environmental review is an important component of any infrastructure project but a multi-year, duplicative, and drawn out process is not necessary and only thwarts completion of beneficial projects including important projects that benefit all highway users. Ringing NEPA into the 21st Century will speed up the permitting for infrastructure projects and will allow Americans to have access to safer roads sooner as the latest roadway safety features are likely to be included in new or updated projects. This is all the more important given that people are eager to get out on the road now that stay-at-home orders are being lifted in certain parts of the country. A quicker kickoff for roadway projects will also lead to reduced emissions. The freer flowing traffic will ease congestion and will use modern technologies that are more respectful of environmental concerns

than they were decades ago. Today's announcement reflects necessary and long-overdue improvements that will unravel the red tape that has tied up and even derailed vital road projects while ensuring thoughtful and complete environmental reviews."

American Legislative Exchange Council, Lisa B. Nelson, CEO: "As America begins to reopen the economy, President Trump's modernization of the NEPA review process will jump start infrastructure projects all over the country and create hundreds of thousands of new jobs. From shipyards and airports to roads and bridges, America needs to update its infrastructure for the 21st century. For too long, the NEPA review process stalled the construction of new infrastructure projects that power modern life. Let's cut red tape and build the infrastructure that makes America great."

American Petroleum Institute, Mike Sommers, CEO: "NEPA modernization will help America streamline permitting to move job-creating infrastructure projects off the drawing board and into development," API President and CEO Mike Sommers said. "Today's action is essential to U.S. energy leadership and environmental progress, providing more certainty to jumpstart not only the modernized pipeline infrastructure we need to deliver cleaner fuels but highways, bridges and renewable energy. These reforms will help accelerate the nation's economic recovery and advance energy infrastructure while continuing necessary environmental reviews."

American Road and Transportation Builders Association, Dave Bauer, President and CEO: "The National Environmental Policy Act's antiquated, three-decade old review procedures have unnecessarily stymied critically needed infrastructure improvements. We heartily endorse President Trump's steadfast commitment to speed up the delivery of transportation projects, while keeping environmental safeguards in place. The full effects of building major projects requiring the NEPA reforms outlined by the Trump administration won't be realized with more temporary federal highway and transit program funding extensions. Maximizing the benefits of the President's NEPA reforms is another in a long line of reasons for Congress to complete action on a robust, multi-year surface transportation investment bill before the current law expires September 30."

American Trucking Associations, Chris Spear, President and CEO: "This is good news for truckers, the motoring public, our economy and the environment," said ATA President and CEO Chris Spear. "It currently takes an average seven years for a highway construction project to get through federal permitting, which is counterproductive in the extreme. This cumbersome review process presents an enormous obstacle to modernizing our outdated infrastructure, contributing to more traffic congestion and the harmful emissions that come with it."

American Trucking Associations, Chairman and President of Triple G Express and Southeastern Motor Freight Randy Guillot: "Infrastructure investment is a surefire way to reduce our nation's environmental impact, and this action by President Trump will help accelerate construction projects that reduce waste and result in a more efficient and resilient supply chain and transportation system for decades to come. Of course, streamlining project approvals won't matter if states don't have the funding needed to plan projects and break ground. COVID-19 has caused a 14% drop in Highway Trust Fund revenue, widening the investment gap

and hurtling us closer to the funding cliff," said Guillot. "If Congress fails to act this year on its Constitutional responsibility, it risks derailing our economic recovery."

Americans for Limited Government, Rick Manning, President: "Environmental reviews are meant to make certain that environmental concerns about an infrastructure project are heard and in many cases mitigated. But these environmental reviews were never supposed to be never-ending death sentences for infrastructure and other projects that our nation needs. The Trump administration's announcement today of the final rule modernizing and accelerating environmental reviews under the National Environmental Policy Act creates balance between valid environmental concerns and our nation's growth. As America's economy rebounds from the Chinese-originated virus downturn, streamlined regulatory approval processes will pave the way for investment in rebuilding our nation's infrastructure and finally allow shovel-ready jobs to be created in a timely manner."

Americans for Tax Reform, Grover Norquist, President: "Under the Obama administration, NEPA regulations were used as a political weapon to delay infrastructure projects with endless paperwork and litigation. It should never take 7 years for the government to issue a permit for building a bridge. Yet this is the average time it currently takes the Federal Highway Administration to complete an Environmental Impact Statement. Today's announcement from CEQ is an important step towards fixing a broken permitting process. This final rule rightly recognizes that infrastructure projects should receive their environmental review in a timely manner and based solely on the merits of the project."

Arizona Electric Power Cooperative, Patrick Ledger, CEO: "Arizona Electric Power Cooperative, Inc. (AEPCO) supports the CEQ's Final Rule updating its NEPA Regulations. This is a long overdue update of one of the most important environmental laws ever passed by Congress. The revisions will ensure that federal agency environmental reviews and authorization are conducted in a timely and efficient manner for entities such as AEPCO that operate facilities that in certain circumstances require environmental review and approval under NEPA."

Arizona Municipal Power Users Association and Mohave Electric Cooperative, Tyler Carlson, President and CEO: "This is an overdue modernization to rulemaking that has not been updated in more than 40 years. NEPA impacts every American's life, every day and this update will help ensure that NEPA serves its intended purpose on protecting the environment without causing multiyear delays on infrastructure projects."

Arizona Rock Products Association, Steve Trussell, Executive Director: "The National Environmental Policy Act or NEPA is of paramount importance to the construction and construction supply industry as well as our nation's critical projects which include roads, bridges, highways, and water infrastructure. That said, environmental impact statements are colossal bureaucratic studies that can average hundreds, if not thousands, of pages with little notable impact on identifying or implementing practical protections for the environment. In fact, some of our nation's greatest infrastructure projects were built in less time than we currently spent conducting, analyzing and administrating the NEPA process. Under the new regulations, environmental reviews for major development would be completed in two years. Further, actions without significant environmental impacts would either be categorically excluded or reviewed in

under one year. These process improvements can be achieved without degrading environmental protections and greatly benefit our country at a critical economic time and the administration is to be lauded for this great accomplishment."

Associated Builders and Contractors, Kristen Swearingen, Vice President of Legislative and Political Affairs: "The modernization of these critical regulations will go a long way toward eliminating unnecessary delays that cause budget overruns in construction. Construction businesses recovering from the ongoing health and economic crisis caused by COVID-19 will surely benefit from these modifications, which will help reduce costs and speed up project approvals so that hardworking U.S. workers can get back on the job quickly and safely. The coordinated, predictable and transparent process to streamline permitting will also enable the industry to plan and execute even the most complex projects while safeguarding our communities, maintaining a healthy environment and being good stewards of public funds."

Associated General Contractors of America, Stephen E. Sandherr, CEO: "This updated review process will make it easier to rebuild aging infrastructure, attract private investment, support efforts to reinvigorate our economy and continue to provide strict protections for the environment. Given the broad, bipartisan support for improving infrastructure, these common-sense reforms should be widely embraced and supported. Significantly, under the final rule, projects still undergo an environmental review with public input. The key difference is that those reviews will last months, instead of years and it will become slightly harder for special interests to delay the process with unmerited lawsuits. Notably, the substantive environmental laws and requirements that come into play on every construction project remain unchanged. At a time when both political parties understand the best way to support the economy is by investing in infrastructure, this new rule will help ensure that civil works funding and public-private partnerships help create needed jobs and deliver results, instead of being mired in red tape and squandered on endless legal squabbles."

Association of American Railroads, Ian Jefferies, President and CEO: "These commonsense reforms will streamline the review process and eliminate many unnecessary obstacles that have long delayed progress on our nation's infrastructure priorities. The freight rail industry appreciates the Administration's commitment to modernizing the regulation to meet the dual goals of accelerating infrastructure projects and also preserving our environment for future generations."

Bipartisan Policy Center, Michele Nellenbach, Director of Strategic Initiatives: "NEPA's environmental review and permitting process gives affected stakeholders and underrepresented voices a meaningful opportunity to engage and share concerns about projects. However, the process can be unnecessarily lengthy and costly. BPC's Executive Council on Infrastructure identified regulatory delays as one of the key obstacles to private investment in American infrastructure projects. The administration's update to the NEPA rules addresses several process delays by empowering key decision-makers to resolve interagency and intragovernmental disputes, increasing data collection and transparency, making simultaneous agency reviews the norm, and providing for more predictable and coordinated schedules."

Building a Better America, Phil Cox, Chairman: "On behalf of the more than 500,000 Americans who urged improvements to the National Environmental Policy Act, we commend President Trump and his Administration for their work to modernize regulations to encourage greater investment in America's critical infrastructure. The Administration's action will result in more jobs and investment and greater transparency and predictability for those seeking to build and improve broadband, airports, roads, transit, and many other public assets. The final rule will encourage greater investment in American infrastructure while ensuring projects are delivered on time and on budget. This final rule will balance environmental protections with ensuring that critical infrastructure projects are not caught in years' worth of unnecessary red tape and duplicative requirements. This will not only provide certainty for American businesses and spur the creation of American jobs at a time when our economy most needs it, but it will also benefit the American people who rely on our nation's infrastructure. In light of the COVID-19 pandemic, the modernized NEPA regulations will also allow critical broadband projects to move forward to provide better access to American workers and students who are relying on a strong broadband connection now more than ever. This final rule will be a critical part of our economic recovery and we applaud the Administration's work to reform and modernize NEPA."

Center for Liquefied Natural Gas, Charlie Riedl, Executive Director: "Today's finalized rule provides certainty for project developers and international buyers looking for consistent and predictable regulatory time frames. A modernized NEPA process will help U.S. LNG compete in the global marketplace while ensuring rigorous safety and environmental standards at home. We are happy to see that the final rule incorporates the One Federal Decision policy which better enables multidomain regulatory projects like LNG facilities to navigate the permitting processes."

Citizens Against Government Waste, Thomas A. Schatz, President: "The updated rules for the National Environmental Policy Act announced today by the Council on Environmental Quality are both welcome and long overdue. They will modernize complex and outdated 40-year old regulations that increased costs and significantly delayed construction, energy, and water projects across the country. NEPA has also been the most litigated environmental law. The new rules will help every business and taxpayer by reducing the time it takes to review a project from seven years to no more than two years, increasing public input and transparency, and making it easier to determine whether federal laws should apply to a project."

Citizens for Responsible Energy Solutions, Heather Reams, Executive Director: "After more than 40 years of existence, NEPA has not aged gracefully. It's astounding that in this modern, on-demand era, anyone would defend expensive, job-killing, bureaucratic red tape. President Trump's NEPA reforms are good for consumers, good for our economic recovery, and good for America writ large. These reforms streamline an environmental review process that had become synonymous with illogical business practices, special interest favoritism, and government overreach. They also give business owners and communities a clear path to successfully embark on big, bold infrastructure projects – including clean energy development – to create quality job opportunities and make life better. The fact of the matter is, if we can cut six years of red tape from a clean energy project like a nuclear plant or modernize wind farm, that's six years of fewer emissions in our atmosphere from conventional sources of power. CRES applauds the Trump

Administration for finding a way to bring new innovations and new infrastructure projects to life faster without sacrificing the intention of the original NEPA legislation."

ClearPath Action Fund: "#NEPAModernization will reduce unnecessary regulatory hurdles that needlessly slow down #energy projects. The efficient permitting of projects is essential to the efficient use of scant taxpayer resources and rapidly scaling #CleanEnergy deployment."

Club for Growth: "President Trump understands the longer a project takes to complete, the more expensive it will cost. By modernizing National Environmental Policy Act #NEPA, @realDonaldTrump is pushing aside bureaucratic #redtape, speeding up infrastructure projects, + strengthening the economy."

Club 20, Christian Reece, Executive Director: "In Western Colorado, the National Environmental Policy Act impacts how we manage wildlife, where we can develop natural resources, and how we develop our transportation and water infrastructure. With an average of 4.5 years to complete a NEPA analysis, many of our economic drivers are literally sitting in limbo, wasting time and money, waiting for approval. It's about time this poorly written, 40-year old set of regulations is updated to allow our communities to prosper by being able to develop our resources in an environmentally sound, socially responsible, timely, and economically viable manner. We applaud the administration for their efforts to modernize this well intentioned, but unreasonably burdensome regulation."

Competitive Enterprise Institute, Myron Ebell, Director for Energy and Environment: "CEI welcomes the final NEPA rule as a major improvement over the existing regulations. Eliminating the necessity to consider cumulative impacts of proposed projects, limiting the effects that can be considered to those that have a reasonably close causal relationship to the project, and excluding projects from NEPA review that have only minimal federal involvement are especially important changes. These and other reforms, if implemented by career civil servants and enforced by federal judges, should remove some of the regulatory obstacles that delay major infrastructure and natural resource projects for years and often decades. The Trump administration's new rule will not drain NEPA's regulatory swamp completely (only Congress can do that), but it should significantly lower the water level."

Competitive Enterprise Institute, Ben Lieberman, Senior Fellow: "There is a backlog of energy and transportation infrastructure projects in the long NEPA queue. These job-creating projects, if expeditiously approved, could help put more people back to work as the economy recovers from the coronavirus pandemic, and the completed projects would strengthen American energy dominance. This is why the Trump administration issued an executive order asking agencies to select proposed projects for expedited NEPA review. This final rule could help many of the rest get a more timely decision without needless climate-related complications."

ConservAmerica, Brett Fewell, General Counsel: "Environmental reviews have become an incredibly cumbersome and confusing process for many project proponents," said Fewell, who served as an adviser at the U.S. Environmental Protection Agency during the George W. Bush administration. "Too often, the long delays caused by appeals and litigation under NEPA drive investors away and eventually cause projects to wither on the vine. Our environment is far

cleaner, and the federal government's actions are far more environmentally mindful than they were five decades ago when NEPA was first signed into law. Much of that progress is because of environmental laws like NEPA."

Conservatives for Property Rights, James Edwards, Founder and Executive Director: "The Trump administration's NEPA reforms are a welcome rebalancing of property rights-based considerations, including fairness, equity and due process. NEPA environmental reviews have grown excessively, detrimentally complicated, costly, long and slow. And they fail to serve the public interest in environmental stewardship. Streamlining NEPA reviews while preserving core environmental safeguards will speed badly needed projects, reduce costs and promote America's industrial competitiveness. Today's regulatory reform protects private property rights and respects property owners' decisions on how to enjoy the fruits of their labor."

Energy Fairness, Paul Griffin, Executive Director: "Reforming NEPA is a winning move not just for the energy industry and jobs, but for integrating renewables, ensuring the continued integrity of that engineering marvel – the Electric Grid – and for ensuring a continued supply of affordable and reliable energy."

Family Farm Alliance, Dan Keppen, Executive Director: "Don't be fooled by the headlines and intonations of activists who make their living in federal court rooms. The new NEPA regulation is just one of several proactive rulemaking efforts undertaken by the Trump Administration, in part intended to correct and rebalance the significant negative impacts to Western farmers and ranchers that have resulted from past federal implementation of environmental laws."

Federal Forest Resource Coalition, Bill Imbergamo, Executive Director: "These reforms make long overdue changes to the burdensome NEPA process. These are common-sense changes favored by the professional staff who bear the brunt of producing these mammoth analyses. Streamlined processes, clarified roles, page and time limits are just good government. The Forest Service produces more EIS's that any other land management agency, most often while simply trying to manage renewable resources and reduce the risk of wildfires. We look forward to seeing these new rules implemented, and to seeing the Forest Service complete their own, agency specific NEPA rules which will allow for further streamlining."

The Fertilizer Institute, Corey Rosenbusch, President and CEO: "NEPA has not been updated in 40 years, and TFI has been supportive of these long overdue changes that improve efficiency of the permitting process and ensure continued environmental protection," said TFI President & CEO Corey Rosenbusch. "Our industry is focused on providing crop nutrients in a way that ensures farmer profitability and minimizes environmental impact so that we can feed a growing world. To do that we also need to grow, and we need the stability and certainty of a regulatory framework that allows us to do so. Many of our members have been negatively impacted by outdated NEPA guidelines," Rosenbusch confirmed. "One producer, whose story is not unique, has spent the last decade and $20 million dollars in pursuit of a permit to grow jobs and instill economic prosperity in a community still reeling from economic stagnation, only to remain unsure of its ultimate fate. TFI believes in the original Congressional intent of NEPA, which was to help public officials make decision that are based on the understanding of

environmental consequences and to take actions that protect, restore, and enhance the environment," Rosenbusch concluded. "These revisions will ensure that federal regulations continue to protect the environment without causing unnecessary negative impacts to the business community and allowing what our members to do what they do best: feed the world."

FreedomWorks, Dan Savickas, Regulatory Policy Manager: "In one of the most advanced, developed nations in the world, there is no excuse for government regulators to hinder infrastructure projects the way they have. Not only did these regulations harm investment and innovation in America, they tangibly made the lives of millions of Americans more onerous as a result. We're glad that the administration is moving to finalize this reform that is long overdue and are looking forward to the positive changes we'll see after its full implementation."

GAIN Coalition, Craig Stevens, Spokesman: "The GAIN Coalition applauds the Trump Administration for taking steps to modernize and streamline our nation's permitting and approval process for critical infrastructure development. While well-intended, NEPA has transformed into a burdensome web of bureaucratic, confusing, and overlapping hurdles that too often delay or halt infrastructure projects costing Americans' jobs and weakening our economy. The Administration's commonsense updates should simplify the review process for infrastructure projects, spur infrastructure investment, and provide an enhanced level of regulatory certainty while still maintaining the integrity of our nation's environmental protections."

Grand Canyon State Electric Cooperative Association, Dave Lock, CEO: "Modernizing a 40-year-old process will enable critical electric and other infrastructure projects to come to fruition sooner rather than much later. NEPA is the most litigated environmental law in the country. The federal government currently averages more than 4.5 years to complete an environmental impact statement. As the saying goes, time is money. As not-for-profits, Arizona's co-ops are always seeking ways to lower costs, which benefits their members. Nudging federal approval along will benefit our co-ops and their members."

Heritage Foundation, Diane Katz, Senior Research Fellow: "Five decades of NEPA experience have revealed its numerous flaws, including arbitrary standards, politicized enforcement, and protracted litigation. While the optimum policy option is repeal of the NEPA entirely, the Trump Administration's reform of NEPA regulations will help to revive the economy in the wake of the COVID-19 crisis. Establishing reasonable timelines for permitting, and streamlining the process of environmental assessments will reduce unnecessary regulatory barriers that otherwise inhibit investment, job creation and economic growth. Among the most important reforms is clarification of the environmental 'effects' that agencies must consider in a NEPA review. This new framework should help to prevent the time-consuming and costly analysis of speculative environmental impacts such as global warming that rely entirely on a convoluted causal chain."

Independent Petroleum Association of America, Barry Russell, President and CEO: "The Trump Administration has taken a bold step to modernize the NEPA process. The new rule updates 40-year-old regulations by reducing unnecessary paperwork, setting timelines for environmental reviews and reduces frivolous litigation efforts designed to simply stall or delay vital infrastructure projects. Prior to this new NEPA rule, building or updating energy

infrastructure on federal lands could be held up in review for years with no decision in sight. IPAA's members fully support environmental protections, smart regulations and community input on projects. However, many times the NEPA review process takes longer to complete than it takes to actually finish a project. The time has come to modernize the outdated NEPA regulations and bring the process into the 21st Century. Developing a regulatory program that provides timely decisions brings much needed certainty to businesses and their employees who are trying to plan for the long term and assure labor, equipment and materials can be available when needed. IPAA also applauds the Trump Administration for taking action to spur key efficiency efforts and improve agency coordination when administering NEPA. The Administration's proposal to condense the interagency review process and designate a lead agency for NEPA reviews is long overdue and enthusiastically welcomed. When the NEPA process results in environmentally sound, modernized infrastructure projects moving forward and being completed in a timely process, all Americans stand to benefit."

International Association of Geophysical Contractors: "IAGC commends the Administration on NEPA modernization, streamlining critical regulatory processes within agencies. Today's action is a significant step in taking NEPA back to Congress' original intent and will reduce costs to consumers and create jobs. #energystartshere"

Interstate Natural Gas Association of America, Alex Oehler, President and CEO: "As America works to recover from COVID-19 and create an economy of the future, infrastructure investment is needed now more than ever. The updated NEPA regulations will undoubtedly make the environmental review process more efficient and provide regulatory certainty, which will stimulate efforts to modernize our nation's infrastructure, create and support private sector jobs, and reduce costs for consumers. Most importantly, this modernization will improve environmental outcomes and restore the intent of NEPA by ensuring federal agencies focus their attention on significant environmental impacts that are relevant to their respective decision-making authorities. We thank the Council on Environmental Quality for their thorough review and for modernizing this important environmental framework."

Junk Science, Steve Milloy, Founder: "No environmental rules are being 'weakened.' The NEPA process is being streamlined to get decisions on a more timely basis. Environmental reviews are not rocket science and the process is always abused by anti-development greens."

National Association of Counties, Matthew Chase, Executive Director/CEO: "As environmental stewards with significant public safety and infrastructure responsibilities, counties welcome the administration's efforts to streamline the permitting process and foster conditions for responsible economic growth. We support the new requirements for federal agencies to work with state and local governments on environmental analyses and other common-sense improvements to the NEPA process. We look forward to continuing our efforts with our federal partners to build infrastructure for the future and achieve our shared environmental and economic goals."

National Association of County Engineers, Kevan P. Stone, Executive Director: "American investment and ingenuity are needed now more than ever. The reforms contained in today's final rule on NEPA will allow county governments to stretch precious infrastructure dollars further

while remaining good stewards of the environment. Allowing greater flexibility and reducing the federal bureaucracy is a winning formula to improving our national transportation infrastructure. As our nation looks to revive its economy, these reforms will be vital in getting more Americans back to work and providing safer roads and bridges in a more streamlined and efficient manner."

National Association of Home Builders, Chuck Fowke, Chairman: "The final rule to reform the National Environmental Policy Act (NEPA) is the most recent example of the Trump administration's ongoing efforts to reduce harmful regulations that hurt small businesses and impede economic growth. By updating the NEPA regulations to modernize the federal environmental review process, the new rule will streamline the federal permitting process and allow badly needed transportation and infrastructure projects to move forward. In turn, this will build strong communities and support a thriving housing market."

National Association of Manufacturers, Jay Timmons, President and CEO: "These bold steps from the Council on Environmental Quality will help boost infrastructure projects—from water and energy delivery to transportation. This will set the stage for more jobs and investment in America."

National Association of Manufacturers, Rachel Jones, Vice President of Energy and Resources: "Manufacturers are committed to smart, strong environmental protections, improving the lives of all Americans and building a more inclusive future together. Amid the COVID-19 pandemic it is more important than ever to strengthen U.S. manufacturing capabilities and operations. Onshoring manufacturing requires first establishing basic infrastructure—from water and energy delivery to transportation—before ground can ever be broken on a major facility. Obtaining permits for these items can take years, especially when environmental reviews are piecemeal, but CEQ's bold steps today utilize existing authority to strengthen reviews, reduce the time necessary to obtain permits and set the stage to incentivize job creation and investment in America."

National Association of Realtors, Vince Malta, President: "While uncertainty will continue to define the coming months, any action policymakers can take to inject some stability and confidence into our markets is welcomed with open arms by America's 1.4 million Realtors®," said Malta, broker at Malta & Co., Inc., in San Francisco, CA. "Since NEPA was last updated four decades ago, the real estate industry has seen countless infrastructure modernization projects paralyzed by arbitrary delays and unreasonable cost increases, barriers which today are felt more heavily because of the COVID-19 pandemic. As we push to safely and sensibly reopen our nation, NAR applauds the White House's continued efforts to balance much-needed environmental protections with economic development in America."

National Association of State Department of Agriculture, President, and North Dakota Agriculture, Commissioner, Doug Goehring: "NASDA members and their federal partners have consistently relied on a common-sense regulatory framework to serve the food, agriculture, and forestry community," said Goehring. "Modernizing NEPA is critical for the continued effectiveness of one of our nation's bedrock environmental laws. NASDA appreciates the emphasis on investing in states as co-regulatory partners. Whether on NEPA, Waters of the

United States, or Hours of Service rules for livestock haulers, supporting regulatory efficiency ultimately supports American agriculture."

National Cattlemen's Beef Association, Marty Smith, President: "The modernized NEPA rule brings common sense back to an important rule that was established to protect our land and water resources. President Trump and his team at the Council on Environmental Quality embraced a once-in-a-generation opportunity to ensure this country has the strongest possible environmental policy for years to come. They deserve an abundance of thanks. American ranchers that care for hundreds of millions of acres of private and public lands across the United States know the importance of implementing timely improvements based on the best knowledge at hand. These changes ensure NEPA does not delay good management practices."

National Cattlemen's Beef Association, Executive Director of Natural Resources and Public Lands Council, Executive Director, Kaitlynn Glover: "Over the last several decades, outdated NEPA processes have led to massive backlogs of federal grazing permits, delayed management actions critical to preventing dangerous wildfire conditions, and other missed opportunities to improve land health. NEPA has been exploited by extremist groups in an effort to remove livestock from the landscape. These changes bring common sense and good science back to the NEPA process and allow federal agencies to concentrate on the real impacts of a proposal in a timely manner. I speak on behalf of all ranchers in thanking the Administration for establishing a stronger future for wildlife, natural resources, and people across the country."

National Mining Association, Rich Nolan, President and CEO: "These reforms will begin to align NEPA with its intended purpose: to balance societal needs with best in class world-leading environmental protections. The mining industry – the very front end of our material supply chains – has long been held back by a broken permitting process that can largely be linked back to NEPA's web of well-documented historical problems. These overdue reforms improve a process that has become a barrier to rebuilding and modernizing essential infrastructure in the U.S."

National Ocean Industries Association, Erik G. Milito, President: "An unprecedented economic crisis needs a historic comeback. The Trump Administration has carefully modernized NEPA so that critical projects can escape endless bureaucratic red tape and lawsuits and get to work with their shovel-ready jobs, while still ensuring a thorough environmental analysis. A smarter NEPA foundation means that many energy and infrastructure projects have the certainty and clarity to finally move forward under the same high level of safety and environmental stewardship Americans demand. A brighter future awaits countless projects, including planned offshore wind farms up and down the Atlantic Coast with the billions of dollars of investment and tens of thousands of American jobs they will bring. These changes to NEPA are critically important policy to both investment and environmental stewardship. Our members are ready to work."

National Rural Electric Cooperative Association, Jim Matheson, CEO: "Regulatory hurdles under NEPA have triggered reliability challenges and forced electric co-ops and their communities to endure costly project delays," said NRECA CEO Jim Matheson. "We support the spirit of NEPA, and these sensible modernizations are long overdue. Today's announcement

will ensure that environmental reviews and decisions involving multiple agencies are synchronized and efficient. These reforms will provide electric co-ops much-needed clarity and certainty as they continue to diversify their energy portfolios and increase the resiliency of their systems. Both necessitate the modernization or construction of new electric transmission and distribution facilities," Matheson said.

National Stone, Sand and Gravel Association, Michele Stanley, Vice President of Government and Regulatory Affairs: "The National Stone, Sand and Gravel Association applauds the Administration for releasing the final rule that will bring much needed modernization and clarity to the National Environmental Policy Act process--while still maintaining strong environmental protections. Once enacted, this rule will remove unnecessary red tape and allow taxpayer dollars to be used to develop much needed infrastructure that sustains high-paying jobs, improves our communities and advance environmental stewardship. It has been more than 40 years since a comprehensive update of the NEPA regulations has been conducted. During this time the process has created duplicative agency actions resulting in year-long delays in the permitting of infrastructure projects. We have witnessed hundreds of public works projects, which are important to the livelihoods of all Americans, be halted and delayed by unnecessary lawsuits and bureaucratic setbacks that do nothing to advance the underlaying goals of NEPA. These setbacks caused by the current process is harming our economic potential needed to help our nation recover. Today's action is an important step in unleashing our potential by allowing investments in renewable energy, clean drinking water, affordable housing, efficient transit and projects that reduced congestion and delays to finally move ahead."

National Taxpayers Union: "President Trump's NEPA reforms are a major step forward for infrastructure projects and for taxpayers. Being able to deliver more projects on time will be a boon to Americans and taxpayers everywhere. We commend the administration for enacting a pro-taxpayer rule and look forward to engaging further on additional infrastructure reforms."

Natural Gas Supply Association, Dena Wiggins, President and CEO: "We applaud the Administration's final rule to modernize and clarify NEPA. NGSA has supported the Council on Environmental Quality's efforts to update NEPA regulations, which will facilitate effective and timely reviews of infrastructure projects needed to serve consumers, all while ensuring continued thorough and comprehensive environmental reviews. This final rule provides a clear roadmap for agencies' environmental reviews, fosters fewer delays and promotes better decision-making for vital energy infrastructure."

New Mexico Federal Lands Council, Don L. Lee, President: "The National Environmental Policy Act is the most litigated environmental law in the country. Rather than conserving an environmental for the benefit of all, the 40-year-old NEPA has cost the nation, the environment and American families millions of dollars due to delayed or eliminated infrastructure projects large and small. This new rule balances the needs of the land, water and its' creatures with those of the people who care for them for the benefit of all involved. We are particularly pleased with the time limit and page limits that are contained in the new rule. There is no way any citizen can review and comment on 600 plus page documents that can take nearly a decade to complete. We look forward to working with the new NEPA."

North America's Building Trade Unions: "Endless delays, limited transparency and agency ambiguity far too often prevent project sponsors, our hard working members, and the public from realizing the benefits of impactful investments in all manner of projects. Common sense reforms and interagency accountability are long overdue."

Off-Road Business Association, Scott Jones, Authorized Representative: "We are thrilled that NEPA is becoming more effective and efficient with the new regulations. Too often lengthy NEPA analysis has delayed small projects such as maintenance, which results in unnecessary impacts to resources and low-quality recreational experiences for the public. The new regulations are a major step in avoiding this situation."

Portland Cement Association, Sean O'Neill, Senior Vice President: "The cement industry applauds the Trump Administration for its commitment to deregulation with the finalization of NEPA modernization and removing the regulatory roadblocks preventing construction of critical and resilient infrastructure, better roads and highways, and access to affordable clean energy," said Sean O'Neill, Senior Vice President, Government Affairs at the Portland Cement Association. "NEPA modernization will ensure that federal permitting requirements will advance our nation's environmental, energy, and economic goals and no longer impose unnecessarily long roadblocks."

Protect Americans Now, John Richardson, President: "For the past 40 years, the National Environmental Policy Act has been one of the biggest detriments to environmental conservation around. There were no clear definitions for federal agents to follow and apply creating litigious situations with no determination of what the appropriate level of review necessary for any project. We are pleased to see the expansion of public involvement and the improvement in coordination with State, Tribes and Localities. In the past the people most impacted by NEPA and its' resulting decisions had the latest and the least input in the process."

Public Lands Council, Bob Skinner, President: "The process updates to NEPA are celebrated across the West. Today's rule recognizes the severe limitations of a policy that had not been updated in more than 40 years. Over the last four decades, ranchers learned and adapted to new needs of wildlife and other rangeland users, but outdated NEPA policy prevented us from responding to many critical situations. The changes finalized today bring NEPA up to date, focus the attention on the real issues at hand, and ensure the government is avoiding speculative and duplicative environmental reviews. Thank you to the Trump Administration for engaging and listening to stakeholders on the ground."

R Street Institute, Devin Hartman, Director of Energy and Environmental Policy: "NEPA reform presents a powerful narrative that reducing regulatory burdens can benefit the economy and the environment," said Hartman. "For example, every fuel category of the clean energy industry wants NEPA reform."

Small Business & Entrepreneurship Council, Karen Kerrigan, President & CEO: "Reducing NEPA delays, red tape, and costs will allow our economy to more quickly reap the benefits of modern infrastructure, which will save time and money for individuals and small businesses alike. The environment will also benefit through less congestion, faster routes and

projects that promote energy efficiency and alternatives. Moreover, America's economy needs the investment and jobs that infrastructure projects generate. Getting these projects off-the-ground through a balanced process and faster timeline will translate into jobs and growth opportunities for small businesses. This is the type of opportunity individuals and entrepreneurs will need to recover from the COVID-19 crash," said Kerrigan. "Americans, especially small business owners, understand the big costs associated with time and money spent in traffic, and the toll this also takes on their quality of life. The changes to NEPA is welcome news, and we thank President Trump for his leadership in this critical area."

Texas Public Policy Foundation, Robert Henneke, General Counsel: "We welcome the announcement of the new NEPA regulations, the most significant reforms to the federal environmental review process in over 40 years. These reforms include the limitation of NEPA reviews to 2 years, down from the current average of 4.5 years, and the streamlining of the review process that currently encompasses multiple federal agencies. By reducing the time and cost of complying with NEPA, these reforms will lead to more jobs and lower costs for American consumers while still maintaining America's world-leading environmental protections."

U.S. Chamber of Commerce, Tom Donohue, President and CEO: "It should not take longer for a project to get permitted than it does for it to be constructed, but unfortunately that is often the case in the United States today. After two decades of discussion about the need for reform, spanning multiple Administrations, we're thankful that the Trump Administration has made this issue a priority and taken thoughtful action. In this time of economic hardship, America must be able to put people to work to rebuild our aging transportation infrastructure like highways, bridges and airports. If we are serious about wanting to improve our climate, we must be able to build the clean energy infrastructure needed like solar panels, wind farms and transmission lines. And if we wish to provide underserved communities with environmentally sustainable infrastructure that unleashes economic opportunities, we must be able to expand access to transit lines. These NEPA updates will make the federal permitting process more predictable and transparent. It will establish timelines for a decision and make requirements more straightforward. Ultimately, this new rule is not about the outcome of permit applications, but the process and time it takes to get to a decision. Make no mistake: NEPA is vital to protecting our environment. The Chamber wholeheartedly supports a thorough environmental review process for projects. This NEPA update does not change existing environmental laws, and it maintains public input opportunities that are so important. Instead, these updates return NEPA back to its original intent-- a timely and focused review of environmental impacts-- rather than a tool to delay projects for years and even decades, which is what it had become. NEPA updates are a great start, but they are not the only answer. We continue our call for Congress to work together in a bipartisan way on an infrastructure package that includes additional permitting improvements and viable funding solutions. The Chamber will continue to lead this fight."

U.S. Energy Association, Barry Worthington, Executive Director: "Under the old NEPA rule, the energy industry was constrained by overlapping and redundant regulations and an unnecessarily lengthy environmental assessment for each infrastructure project. Regardless of politics, this hurt all American energy consumers, and our allies who rely on our resources.

President Trump is not rolling back regulations or removing environmental protections. Duplicative regulations make no sense. Why should several agencies or several states assess the exact same impact of a project? The old NEPA rule was like having to get a driver's license from 50 different states. It was in need of an update. Waiting seven years for a proposed new bridge to start construction is often the reason bridges collapse, like the one in St. Paul, which collapsed in 2007. Critical infrastructure cannot wait, and it supersedes party lines. Democrats and the Trump administration agree we need infrastructure. It is one of the great equalizers of our society. Critical infrastructure to transport much-needed energy supplies to population centers can't wait 4-7 years to start construction. All Americans need to feel secure that the roads and bridges they drive over are safe and modern. They need to rely on reliable electricity and energy supplies to live. That requires pipelines. The NEPA rule will also open the gateway for new renewable energy projects in a timely fashion. This is a bipartisan win. Environmental management and energy development go hand in hand. The Trump administration environmental policies have allowed our industry to thrive instead of being constrained. Our environment is protected, and our citizens are protected. Infrastructure expansion boosts our economy, while pipeline infrastructure helps improve our environment. After all, it's natural gas that has helped drive down carbon emissions notwithstanding the drop in global emissions we've seen during this global pandemic. Infrastructure expansion puts the U.S. in a position of strength in the world. We are global suppliers of energy and leaders in energy access expansion. Trump administration policies to rollback redundant regulations encourage production and infuse certainty in the energy market. This creates jobs, grows our economy and propagates prosperity across the nation in all communities."

Wellton-Mohawk Irrigation & Drainage District, Elston Grubaugh, General Manager: "As the General Manager of a distribution utility, I understand the hurdles NEPA creates for many of our infrastructure projects that have a Federal nexus. The final rule is an important step in the right direction for modernizing a forty-year-old process to reflect the technology and renewable energy needs of today."

Western Energy Alliance, Kathleen Sgamma, President: "For far too long, NEPA has been a tool used not for mitigating actual environmental impacts, but for stopping projects that create jobs and economic benefits for society. The recent ruling on the Dakota Access Pipeline is but another example of how endless rounds of NEPA threaten environmentally responsible energy infrastructure. As a functioning society, we must get a handle on NEPA to reach a reasonable balance between building infrastructure and protecting the environment. This administration has the courage to tackle this difficult issue, and we applaud the final rule."