Biden-Harris Administration Proposes Reforms to Modernize Environmental Reviews, Accelerate America’s Clean Energy Future, and Strengthen Public Input

Bipartisan Permitting Reform Implementation Rule would implement new permitting efficiencies included in the Fiscal Responsibility Act

WASHINGTON - Today, the White House Council on Environmental Quality (CEQ) released a proposed rule that would fully implement and build upon new permitting efficiencies directed by Congress under the Fiscal Responsibility Act of 2023. CEQ’s Bipartisan Permitting Reform Implementation Rule would modernize and accelerate environmental reviews under the National Environmental Policy Act (NEPA), encourage early community engagement, accelerate America’s clean energy future, strengthen energy security, and advance environmental justice. Thanks to President Biden’s Permitting Action Plan and $1 billion included in the Inflation Reduction Act to help expedite federal agency permitting, environmental impact statements under the Biden-Harris Administration are already getting completed more quickly than they ever did under the previous Administration.

To meet President Biden’s historic clean energy and infrastructure goals, a core component of Bidenomics, the Biden-Harris Administration is undertaking an all-of-government effort to accelerate federal permitting while ensuring strong environmental protections and robust community engagement. Under President Biden’s leadership, CEQ has already clarified and restored basic safeguards for environmental reviews and issued guidance to agencies on how to account for climate change and greenhouse gas emissions, so fewer projects get tangled up in litigation and more projects get built right the first time.

The reforms announced today will continue to advance the Biden-Harris Administration’s strategy for ensuring that federal environmental reviews and permitting processes are effective, efficient, and transparent, guided by the best available science to promote positive environmental and community outcomes, and shaped by early and meaningful public engagement and input.

“These reforms to federal environmental reviews will deliver better decisions, faster permitting, and more community input and local buy-in,” said Brenda Mallory, Chair of the White House Council on Environmental Quality. “This rule is a key element of President Biden’s permitting reform agenda that will help us speed the
build-out of our clean energy future while reducing pollution and harms in communities that have been left out and left behind for far too long.”

“We need to accelerate and improve the permitting process in order to meet our ambitious climate and clean energy goals. That’s why President Biden has made permitting a top priority of senior Administration officials for the first time in history,” said John Podesta, Senior Advisor to the President for Clean Energy Innovation and Implementation. “Today’s proposed regulations represent our Administration’s next step on permitting to help accelerate infrastructure and clean energy deployment while promoting meaningful public input and advancing environmental justice.”

The Bipartisan Permitting Reform Implementation Rule would fully implement the statutory reforms to NEPA included in the Fiscal Responsibility Act, including clarifying the roles of lead and cooperating agencies, setting deadlines and page limits, and adding other requirements to ensure timely and unified environmental reviews. Consistent with the Fiscal Responsibility Act, the proposed rule also includes a process for a federal agency to use another agency’s categorical exclusion, unlocking faster reviews for projects that have few environmental effects.

In addition to meeting the requirements of the Fiscal Responsibility Act, the proposed rule improves efficiency and certainty for projects and stakeholders by creating new tools to accelerate and improve environmental review, including encouraging agencies to consider a project’s mitigation measures to reduce the level of environmental review required, additional mechanisms for agencies to establish categorical exclusions, and enabling wider adoption of programmatic environmental reviews to expedite broad categories of projects. These reforms will help accelerate everything from wildfire management and electric vehicle charging infrastructure to transmission and offshore wind.

Overall, the proposed rule’s reforms will:

- **Accelerate the deployment of clean energy, transmission, broadband, clean water, and other crucial infrastructure:** In addition to coordinating environmental reviews and setting project schedules and milestones, the proposed rule clarifies that projects that only have significant, long-lasting positive impacts do not require environmental impact statements. It also encourages the use of programmatic environmental reviews that cover multiple projects or categories of projects, which can expedite deployment of clean energy, transmission, broadband, and other infrastructure. The proposed rule ensures agencies evaluate a range of reasonable alternatives and their reasonably foreseeable effects as well as identify the environmentally preferable alternative earlier in the process, which helps drive better decisions including advancing projects with lower greenhouse gas emissions.
The proposed rule also clarifies that agencies can establish joint categorical exclusions, and discourages duplication by allowing agencies to incorporate existing high-quality analysis into environmental reviews. Notably, the proposed rule would enable agencies to establish new categorical exclusions through a land use plan, decisions supported by a programmatic environmental review, or other equivalent programmatic and planning decisions. This change allows agencies to more quickly and easily develop categorical exclusions for specific contexts, geographies, or project types, such as those that enable hazardous fuels reduction in an area with high wildfire risk or the deployment of electric vehicle charging infrastructure.

- **Address climate change, protect public health, and encourage better environmental outcomes:** The proposed rule clarifies that agencies should consider climate change effects in environmental reviews and encourages identification of reasonable alternatives that will mitigate climate impacts so that we build smart from the start on firm legal footing. It also restores and updates the long-standing approach to consider the context and intensity when determining the significance of effects to ensure agencies conduct the proper level of review, and that reviews focus on the issues and effects that are important to the decision. Agencies are encouraged to use high-quality information, such as the best available science and data, to describe reasonably foreseeable environmental trends including those due to climate change. The proposed rule requires environmental impact statements to include discussion of relevant risk reduction, resiliency, or adaptation measures, as well as the potential for disproportionate adverse effects on the environment and public health.

- **Advance environmental justice and promote meaningful public engagement:** The proposed rule encourages early and meaningful engagement with communities, fostering community buy-in, reducing conflict, and improving project design, which in turn may reduce litigation. Building on President Biden’s Executive Order 14096, the proposed rule will direct agencies to consider environmental justice in environmental reviews and—for the first time—encourage agencies to incorporate measures to avoid or reduce disproportionate effects on communities, including the cumulative effects of pollution. The proposed rule also requires agencies to consider the needs of affected communities when developing outreach and notification strategies and identify Chief Public Engagement Officers responsible for facilitating community engagement across the agency.

- **Reverse provisions of the 2020 NEPA rule that created litigation risks and jeopardized community input:** The proposed rule removes certain changes instituted by the previous Administration, including removing detailed
and onerous requirements on what public comments must contain to be considered by agencies. The proposed rule also removes provisions that curtailed judicial review, including a provision that encouraged agencies to require litigants to post monetary bonds if they are seeking a preliminary injunction against a project and a provision that attempted to limit the ability of courts to provide injunctive relief when there are violations of NEPA—even if a proposed action could threaten public health or safety.

This is “Phase 2” of CEQ’s NEPA rulemaking. Last year, CEQ finalized a targeted regulation that restored three basic elements of its NEPA regulations, including a reaffirmation that federal agencies must evaluate all relevant environmental effects—including those associated with climate change—during environmental reviews.

The proposed rule will be open for public comment through Friday, September 29, 2023 via Regulations.gov. CEQ will hold virtual public meetings on the proposal on Saturday, August 26; Wednesday, August 30; Monday, September 11; and Thursday, September 21. Information about joining these public meetings will be available at www.nepa.gov.

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